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(Original Signature of Member)

110TH CONGRESS
1ST SESSION

H. R. _____

To strengthen enforcement of immigration laws, and gain operational control
over the borders of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. KING of New York (for himself and Mr. SMITH of Texas) introduced the
following bill; which was referred to the Committee on

A BILL

To strengthen enforcement of immigration laws, and gain
operational control over the borders of the United States,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secure Borders FIRST
5 (For Integrity, Reform, Safety, and Anti-Terrorism) Act
6 of 2007”.

1 **TITLE I—BORDER SECURITY**

2 **SEC. 101. ACHIEVING OPERATIONAL CONTROL OF THE**
3 **BORDERS.**

4 (a) IN GENERAL.—Not later than December 31,
5 2013, the Secretary of Homeland Security shall achieve
6 operational control of the international land and maritime
7 borders of the United States by carrying out the following:

8 (1) Deploying along such borders physical in-
9 frastructure enhancements, including additional
10 checkpoints, all weather access roads, fencing, and
11 vehicle barriers to gain operational control over such
12 borders and to facilitate access to such borders by
13 United States Customs and Border Protection.

14 (2) Expediting the requirements of the Secure
15 Fence Act of 2006 (Public Law 109–347), including
16 the amendments made by such Act to section 102(b)
17 of the Illegal Immigration Reform and Immigrant
18 Responsibility Act of 1996 (Public Law 104-208; 8
19 U.S.C. 1103 note) (relating to the construction of
20 reinforced fencing and other security improvements
21 in the border area from the Pacific Ocean to the
22 Gulf of Mexico).

23 (3) Conducting systematic surveillance of the
24 international land and maritime borders of the
25 United States through more effective use of per-

1 sonnel and technology, such as unmanned aerial ve-
2 hicles, ground-based sensors, satellites, radar cov-
3 erage, and cameras.

4 (b) DEFINITION.—In this section, the term “oper-
5 ational control” means the prevention of all unlawful en-
6 tries into the United States, including entries by terror-
7 ists, other unlawful aliens, instruments of terrorism, nar-
8 cotics, and other contraband.

9 **SEC. 102. BORDER PATROL AGENTS.**

10 (a) DEADLINE.—Not later than December 31, 2008,
11 the Secretary of Homeland Security shall ensure that the
12 Border Patrol has not fewer than 18,000 Border Patrol
13 agents and sufficient support staff for such agents, includ-
14 ing mechanics, administrative support, and surveillance
15 personnel.

16 (b) FISCAL YEARS 2009 AND 2010.—In fiscal years
17 2009 and 2010, the Secretary of Homeland Security shall
18 increase by not less than 2,000 the number of positions
19 for full-time active-duty Border Patrol agents within the
20 Department of Homeland Security above the number of
21 such positions existing in the preceding fiscal year.

22 **SEC. 103. INCREASE IN PORT OF ENTRY STAFFING.**

23 For each of fiscal years 2008, 2009, 2010, and 2011,
24 the Secretary of Homeland Security shall increase by not
25 fewer than 250 the number of Customs and Border Pro-

1 tection officers at United States ports of entry over the
2 number of such officers at such ports for the preceding
3 year.

4 **SEC. 104. REVIEW OF BORDER SECURITY POLICIES AND**
5 **PROCEDURES.**

6 (a) ESTABLISHMENT OF TASK FORCE TO REFORM
7 BORDER PATROL POLICIES.—(1) Not later than 90 days
8 after the date of the enactment of this Act, the Secretary
9 of Homeland Security, acting through the Commissioner
10 of United States Customs and Border Protection, shall es-
11 tablish a task force to examine the policies and procedures
12 of the Border Patrol as they pertain to—

13 (A) the use of deadly force which is defined as
14 any force that is likely to cause death, or serious
15 bodily injury as that term is defined in section
16 924(c)(2) of title 18 of the United States Code; and

17 (B) the pursuit of fleeing vehicles.

18 (2) The task force shall consider the current policies
19 and procedures for the use of deadly force and the pursuit
20 of fleeing vehicles in every aspect of the mission of the
21 United States Border Patrol, especially in deterring—

22 (A) human trafficking or smuggling;

23 (B) “drug trafficking crime” as that term is de-
24 fined in section 924(c)(2) of title 18, United States
25 Code; and

1 (C) any “crime of violence” as that term is de-
2 fined in section 16 of title 18, United States Code.

3 (b) COMPOSITION OF TASK FORCE.—The task force
4 established under subsection (b) shall be composed of indi-
5 viduals from the following:

6 (1) Representatives from State and local law
7 enforcement agencies from jurisdictions along the
8 northern or southern international borders of the
9 United States.

10 (2) The National Border Patrol Council.

11 (3) The National Association of Former Border
12 Patrol Officers.

13 (4) Human rights groups with experience re-
14 garding aliens who cross the international land bor-
15 ders of the United States.

16 (5) Any group that the Commissioner deter-
17 mines would contribute to the examination of the
18 policies described in subsection (b).

19 (c) REPORT.—Not later than 180 days after the date
20 of the enactment of this Act, the Commissioner shall sub-
21 mit to the Committee on Homeland Security of the House
22 of Representatives and the Committee on Homeland Secu-
23 rity and Governmental Affairs of the Senate a report sum-
24 marizing the findings and recommendations of the task
25 force. The Commissioner shall include in such report an

1 appendix, containing statements from any individual, offi-
2 cial, or group that objects to the findings or recommenda-
3 tions contained in the report.

4 **SEC. 105. IMPLEMENTATION OF US-VISIT.**

5 (a) FINDINGS.—The Congress finds the following:

6 (1) Recognizing that the United States needed
7 a border management system, Congress passed the
8 Illegal Immigration Reform and Immigrant Respon-
9 sibility Act of 1996 (P.L. 104-208) which directed
10 the Attorney General, later amended to the Sec-
11 retary of Homeland Security, to develop an auto-
12 mated entry and exit control system to collect
13 records of arrival and departure from every foreign
14 visitor entering and leaving the United States.

15 (2) Concerned that little progress had been
16 made, Congress passed the Data Management Im-
17 provement Act of 2000 (P.L. 106-215) which set
18 specific deadlines for the implementation of the
19 entry and exit control system for all air and seaports
20 by December 31, 2003, for the 50 largest land bor-
21 der ports of entry by December 31, 2004, and for
22 all remaining ports of entry by December 31, 2005.

23 (3) After the terrorist attacks of September 11,
24 2001, Congress again addressed the entry- and exit-
25 system during consideration of the USA Patriot Act

1 of 2001 (P.L. 107-56), which required that the sys-
2 tem include the use of biometrics and be able to
3 interface with law enforcement databases to identify
4 and detain individuals who pose a threat to national
5 security.

6 (4) The Department of Homeland Security has
7 implemented a portion of requirements for the entry
8 and exit system to include the collection of biometric
9 information upon entry into the United States at all
10 air, sea, and land ports of entry. However, the De-
11 partment has not fulfilled the existing mandates for
12 the exit portion to be deployed.

13 (5) Four of the al-Qaeda members that carried
14 out the September 11, 2001, terrorist attacks re-
15 mained in the country after their visa expired.

16 (6) Lacking a functioning biometric exit system
17 leaves the United States at risk for individuals to
18 enter the United States, remain in the country with
19 impunity past their authorized stay, and conduct
20 terrorist fundraising and attacks.

21 (b) AIRPORT AND SEAPORT EXIT IMPLEMENTA-
22 TION.—Not later than December 31, 2008, the Secretary
23 of Homeland Security shall complete the exit portion of
24 the integrated entry and exit data system (commonly re-
25 ferred to as the “United States Visitor and Immigrant

1 Status Indicator Technology system” or “US-VISIT”) re-
2 quired under section 110 of the Illegal Immigration Re-
3 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
4 1365a) for aliens arriving in or departing from the United
5 States at an airport or seaport.

6 (c) LAND EXIT IMPLEMENTATION.—The Secretary
7 of Homeland Security shall develop a strategy for imple-
8 mentation of exit portion of the integrated entry and exit
9 data system (commonly referred to as the “United States
10 Visitor and Immigrant Status Indicator Technology Sys-
11 tem” or “US-VISIT”) referred to under section 110 of
12 the Illegal Immigration Reform and Immigrant Responsi-
13 bility Act of 1996 (8 U.S.C. 1365a) for aliens departing
14 from the United States at a land port of entry. The Sec-
15 retary shall implement the system not later than Decem-
16 ber 31, 2008.

17 **SEC. 106. MANDATORY DETENTION FOR ALIENS APPRE-**
18 **HENDED AT OR BETWEEN PORTS OF ENTRY.**

19 (a) IN GENERAL.—Not later than 90 days after the
20 date of the enactment of this Act, an alien who attempts
21 to unlawfully enter the United States and is apprehended
22 at a United States port of entry or along the international
23 land and maritime borders of the United States shall be
24 detained until removed or a final decision granting admis-
25 sion has been made, unless the alien—

1 (1) is permitted to withdraw an application for
2 admission under section 235(a)(4) of the Immigra-
3 tion and Nationality Act (8 U.S.C. 1225(a)(4)) and
4 immediately departs from the United States pursu-
5 ant to such section; or

6 (2) is paroled into the United States by the
7 Secretary of Homeland Security for urgent humani-
8 tarian reasons or significant public benefit in accord-
9 ance with section 212(d)(5)(A) of such Act (8
10 U.S.C. 1182(d)(5)(A)).

11 (b) RULES OF CONSTRUCTION.—

12 (1) ASYLUM AND REMOVAL.—Nothing in this
13 section shall be construed as limiting the right of an
14 alien to apply for asylum or for relief or deferral of
15 removal based on a fear of persecution.

16 (2) TREATMENT OF CERTAIN ALIENS.—The
17 mandatory detention requirement of subsection (a)
18 shall not apply to any alien who is a native or citizen
19 of a country in the Western Hemisphere with whose
20 government the United States does not have full dip-
21 lomatic relations.

22 (3) DISCRETION.—Nothing in this section shall
23 be construed as limiting the authority of the Sec-
24 retary of Homeland Security, in the Secretary's sole
25 unreviewable discretion, to determine whether an

1 alien described in clause (ii) of section 235(b)(1)(B)
2 of the Immigration and Nationality Act (8 U.S.C.
3 1225(b)(1)(B)) shall be detained or released after a
4 finding of a credible fear of persecution (as defined
5 in clause (v) of such section).

6 **SEC. 107. EXPEDITED REMOVAL.**

7 (a) IN GENERAL.—Section 235(b)(1)(A)(iii) of the
8 Immigration and Nationality Act (8 U.S.C.
9 1225(b)(1)(A)(iii)) is amended—

10 (1) in subclause (I), by striking “Attorney Gen-
11 eral” and inserting “Secretary of Homeland Secu-
12 rity” each place it appears; and

13 (2) by adding at the end the following new sub-
14 clause:

15 “(III) EXCEPTION.—Notwithstanding
16 subclauses (I) and (II), the Secretary of
17 Homeland Security shall apply clauses (i)
18 and (ii) of this subparagraph to any alien
19 (other than an alien described in subpara-
20 graph (F)) who is not a national of a coun-
21 try contiguous to the United States, who
22 has not been admitted or paroled into the
23 United States, and who is apprehended
24 within 100 miles of an international land

1 border of the United States and within 14
2 days of entry.”.

3 (b) EXCEPTIONS.—Section 235(b)(1)(F) of the Im-
4 migration and Nationality Act (8 U.S.C. 1225(b)(1)(F))
5 is amended by striking “who arrives by aircraft at a port
6 of entry” and inserting “, and who arrives by aircraft at
7 a port of entry or who is present in the United States
8 and arrived in any manner at or between a port of entry”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect on the date of the enactment
11 of this Act and shall apply to all aliens apprehended on
12 or after such date.

13 **SEC. 108. DENIAL OF ADMISSION TO NATIONALS OF COUN-**
14 **TRY DENYING OR DELAYING ACCEPTING**
15 **ALIEN.**

16 Section 243(d) of the Immigration and Nationality
17 Act (8 U.S.C. 1253(d)) is amended to read as follows:

18 “(d) DENIAL OF ADMISSION TO NATIONALS OF
19 COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—
20 Whenever the Secretary of Homeland Security determines
21 that the government of a foreign country has denied or
22 unreasonably delayed accepting an alien who is a citizen,
23 subject, national, or resident of that country after the
24 alien has been ordered removed from the United States,
25 the Secretary, after consultation with the Secretary of

1 State, may deny admission to any citizen, subject, na-
2 tional, or resident of that country until the country ac-
3 cepts the alien who was ordered removed.”.

4 **SEC. 109. ALIEN TRANSFER AND REIMBURSEMENT AU-**
5 **THORITY.**

6 (a) TRANSFER TO FEDERAL CUSTODY.—The Sec-
7 retary of Homeland Security shall require appropriate per-
8 sonnel from the Department of Homeland Security to re-
9 spond within 24 hours in person to all requests made by
10 a State, or political subdivision of a State, participating
11 in the program described in section 287(g) of the Immi-
12 gration and Nationality Act (8 U.S.C. 1357(g)) that the
13 Secretary take into custody an alien, if the Secretary has
14 confirmed that the alien is unlawfully present in the
15 United States.

16 (b) REIMBURSEMENT OF COSTS.—If the Secretary
17 fails to carry out subsection (a), the Secretary shall be re-
18 sponsible for the detention costs incurred by the State or
19 political subdivision as a result of such failure.

20 **SEC. 110. MANDATORY MINIMUM SENTENCE FOR REENTRY**
21 **OF CERTAIN ALIENS.**

22 (a) ENTRY OF ALIEN AT IMPROPER TIME OR
23 PLACE.—Section 275(a) of the Immigration and Nation-
24 ality Act (8 U.S.C. 1325(a)) is amended by adding at the
25 end the following: “In the case of a third or subsequent

1 offense, the alien shall be imprisoned not less than 3
2 months.”.

3 (b) REENTRY OF REMOVED ALIENT.—Section
4 276(a) of such Act (8 U.S.C. 1326(a)) is amended by add-
5 ing at the end the following: “In the case of a second or
6 subsequent offense, the alien shall be imprisoned not less
7 than 3 months.”.

8 **TITLE II—PUBLIC SAFETY**
9 **Subtitle A—Detention of**
10 **Dangerous Aliens**

11 **SEC. 201. DETENTION OF DANGEROUS ALIENS.**

12 Section 241(a) of the Immigration and Nationality
13 Act (8 U.S.C. 1231(a)) is amended—

14 (1) by striking “Attorney General” each place
15 it appears, except for the first reference in para-
16 graph (4)(B)(i), and inserting “Secretary of Home-
17 land Security”;

18 (2) in paragraph (1), by adding at the end of
19 subparagraph (B) the following:

20 “If, at that time, the alien is not in the custody
21 of the Secretary of Homeland Security (under
22 the authority of this Act), the Secretary shall
23 take the alien into custody for removal, and the
24 removal period shall not begin until the alien is
25 taken into such custody. If the Secretary trans-

1 fers custody of the alien during the removal pe-
2 riod pursuant to law to another Federal agency
3 or a State or local government agency in con-
4 nection with the official duties of such agency,
5 the removal period shall be tolled, and shall
6 begin anew on the date of the alien's return to
7 the custody of the Secretary, subject to clause
8 (ii).”;

9 (3) by amending clause (ii) of paragraph (1)(B)
10 to read as follows:

11 “(ii) If a court, the Board of Immi-
12 gration Appeals, or an immigration judge
13 orders a stay of the removal of the alien,
14 the date the stay of removal is no longer
15 in effect.”;

16 (4) by amending paragraph (1)(C) to read as
17 follows:

18 “(C) SUSPENSION OF PERIOD.—The re-
19 moval period shall be extended beyond a period
20 of 90 days and the alien may remain in deten-
21 tion during such extended period if the alien
22 fails or refuses to make all reasonable efforts to
23 comply with the removal order, or to fully co-
24 operate with the Secretary of Homeland Secu-
25 rity's efforts to establish the alien's identity and

1 carry out the removal order, including making
2 timely application in good faith for travel or
3 other documents necessary to the alien's depar-
4 ture, or conspires or acts to prevent the alien's
5 removal subject to an order of removal.”;

6 (5) in paragraph (2), by adding at the end the
7 following: “If a court, the Board of Immigration Ap-
8 peals, or an immigration judge orders a stay of re-
9 moval of an alien who is subject to an administra-
10 tively final order of removal, the Secretary, in the
11 exercise of the Secretary's discretion, may detain the
12 alien during the pendency of such stay of removal.”;

13 (6) by amending paragraph (3)(D) to read as
14 follows:

15 “(D) to obey reasonable restrictions on the
16 alien's conduct or activities, or perform affirma-
17 tive acts, that the Secretary of Homeland Secu-
18 rity prescribes for the alien, in order to prevent
19 the alien from absconding, or for the protection
20 of the community, or for other purposes related
21 to the enforcement of the immigration laws.”;

22 (7) in paragraph (6), by striking “removal pe-
23 riod and, if released,” and inserting “removal period,
24 in the discretion of the Secretary of Homeland Secu-
25 rity, without any limitations other than those speci-

1 fied in this section, until the alien is removed. If an
2 alien is released, the alien”; and

3 (8) by redesignating paragraph (7) as para-
4 graph (10) and inserting after paragraph (6) the fol-
5 lowing:

6 “(7) PAROLE.—If an alien detained pursuant to
7 paragraph (6) is an applicant for admission, the
8 Secretary of Homeland Security, in the Secretary’s
9 discretion, may parole the alien under section
10 212(d)(5) and may provide, notwithstanding such
11 section, that the alien shall not be returned to cus-
12 tody unless either the alien violates the conditions of
13 the alien’s parole or the alien’s removal becomes rea-
14 sonably foreseeable, but in no circumstance shall
15 such alien be considered admitted.

16 “(8) ADDITIONAL RULES FOR DETENTION OR
17 RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN
18 ENTRY.—The following procedures apply only with
19 respect to an alien who has effected an entry into
20 the United States. These procedures do not apply to
21 any other alien detained pursuant to paragraph (6):

22 “(A) ESTABLISHMENT OF A DETENTION
23 REVIEW PROCESS FOR ALIENS WHO FULLY CO-
24 OPERATE WITH REMOVAL.—For an alien who
25 has made all reasonable efforts to comply with

1 a removal order and to cooperate fully with the
2 Secretary of Homeland Security's efforts to es-
3 tablish the alien's identity and carry out the re-
4 moval order, including making timely applica-
5 tion in good faith for travel or other documents
6 necessary to the alien's departure, and has not
7 conspired or acted to prevent removal, the Sec-
8 retary shall establish an administrative review
9 process to determine whether the alien should
10 be detained or released on conditions. The Sec-
11 retary shall make a determination whether to
12 release an alien after the removal period in ac-
13 cordance with subparagraph (B). The deter-
14 mination shall include consideration of any evi-
15 dence submitted by the alien, and may include
16 consideration of any other evidence, including
17 any information or assistance provided by the
18 Secretary of State or other Federal official and
19 any other information available to the Secretary
20 of Homeland Security pertaining to the ability
21 to remove the alien.

22 “(B) AUTHORITY TO DETAIN BEYOND THE
23 REMOVAL PERIOD.—

24 “(i) IN GENERAL.—The Secretary of
25 Homeland Security, in the exercise of the

1 Secretary's discretion, without any limita-
2 tions other than those specified in this sec-
3 tion, may continue to detain an alien for
4 90 days beyond the removal period (includ-
5 ing any extension of the removal period as
6 provided in paragraph (1)(C)).

7 “(ii) SPECIFIC CIRCUMSTANCES.—The
8 Secretary of Homeland Security, in the ex-
9 ercise of the Secretary's discretion, without
10 any limitations other than those specified
11 in this section, may continue to detain an
12 alien beyond the 90 days authorized in
13 clause (i)—

14 “(I) until the alien is removed, if
15 the Secretary determines that there is
16 a significant likelihood that the
17 alien—

18 “(aa) will be removed in the
19 reasonably foreseeable future; or

20 “(bb) would be removed in
21 the reasonably foreseeable future,
22 or would have been removed, but
23 for the alien's failure or refusal
24 to make all reasonable efforts to
25 comply with the removal order,

1 or to cooperate fully with the
2 Secretary's efforts to establish
3 the aliens' identity and carry out
4 the removal order, including
5 making timely application in
6 good faith for travel or other doc-
7 uments necessary to the alien's
8 departure, or conspiracies or acts
9 to prevent removal;

10 “(II) until the alien is removed,
11 if the Secretary of Homeland Security
12 certifies in writing—

13 “(aa) in consultation with
14 the Secretary of Health and
15 Human Services, that the alien
16 has a highly contagious disease
17 that poses a threat to public safe-
18 ty;

19 “(bb) after receipt of a writ-
20 ten recommendation from the
21 Secretary of State, that release
22 of the alien is likely to have seri-
23 ous adverse foreign policy con-
24 sequences for the United States;

1 “(cc) based on information
2 available to the Secretary of
3 Homeland Security (including
4 classified, sensitive, or national
5 security information, and without
6 regard to the grounds upon
7 which the alien was ordered re-
8 moved), that there is reason to
9 believe that the release of the
10 alien would threaten the national
11 security of the United States; or

12 “(dd) that the release of the
13 alien will threaten the safety of
14 the community or any person,
15 conditions of release cannot rea-
16 sonably be expected to ensure the
17 safety of the community or any
18 person, and either (AA) the alien
19 has been convicted of one or
20 more aggravated felonies (as de-
21 fined in section 101(a)(43)(A))
22 or of one or more crimes identi-
23 fied by the Secretary of Home-
24 land Security by regulation, or of
25 one or more attempts or conspir-

1 acies to commit any such aggra-
2 vated felonies or such identified
3 crimes, if the aggregate term of
4 imprisonment for such attempts
5 or conspiracies is at least 5
6 years; or (BB) the alien has com-
7 mitted one or more crimes of vio-
8 lence (as defined in section 16 of
9 title 18, United States Code, but
10 not including a purely political
11 offense) and, because of a mental
12 condition or personality disorder
13 and behavior associated with that
14 condition or disorder, the alien is
15 likely to engage in acts of vio-
16 lence in the future; or

17 “(ee) that the release of the
18 alien will threaten the safety of
19 the community or any person,
20 conditions of release cannot rea-
21 sonably be expected to ensure the
22 safety of the community or any
23 person, and the alien has been
24 convicted of at least one aggra-

1 vated felony (as defined in sec-
2 tion 101(a)(43)); or

3 “(III) pending a determination
4 under subclause (II), so long as the
5 Secretary of Homeland Security has
6 initiated the administrative review
7 process not later than 30 days after
8 the expiration of the removal period
9 (including any extension of the re-
10 moval period, as provided in sub-
11 section (a)(1)(C)).

12 “(C) RENEWAL AND DELEGATION OF CER-
13 TIFICATION.—

14 “(i) RENEWAL.—The Secretary of
15 Homeland Security may renew a certifi-
16 cation under subparagraph (B)(ii)(II)
17 every 6 months without limitation, after
18 providing an opportunity for the alien to
19 request reconsideration of the certification
20 and to submit documents or other evidence
21 in support of that request. If the Secretary
22 does not renew a certification, the Sec-
23 retary may not continue to detain the alien
24 under subparagraph (B)(ii)(II).

1 “(ii) DELEGATION.—Notwithstanding
2 section 103, the Secretary of Homeland
3 Security may not delegate the authority to
4 make or renew a certification described in
5 item (bb), (cc), or (ee) of subparagraph
6 (B)(ii)(II) below the level of the Assistant
7 Secretary for Immigration and Customs
8 Enforcement.

9 “(iii) HEARING.—The Secretary of
10 Homeland Security may request that the
11 Attorney General or the Attorney General’s
12 designee provide for a hearing to make the
13 determination described in item (dd)(BB)
14 of subparagraph (B)(ii)(II).

15 “(D) RELEASE ON CONDITIONS.—If it is
16 determined that an alien should be released
17 from detention, the Secretary of Homeland Se-
18 curity, in the exercise of the Secretary’s discre-
19 tion, may impose conditions on release as pro-
20 vided in paragraph (3).

21 “(E) REDETENTION.—The Secretary of
22 Homeland Security, in the exercise of the Sec-
23 retary’s discretion, without any limitations
24 other than those specified in this section, may
25 again detain any alien subject to a final re-

1 moval order who is released from custody if the
2 alien fails to comply with the conditions of re-
3 lease, or to continue to satisfy the conditions
4 described in subparagraph (A), or if, upon re-
5 consideration, the Secretary determines that the
6 alien can be detained under subparagraph (B).
7 Paragraphs (6) through (8) shall apply to any
8 alien returned to custody pursuant to this sub-
9 paragraph, as if the removal period terminated
10 on the day of the redetention.

11 “(F) CERTAIN ALIENS WHO EFFECTED
12 ENTRY.—If an alien has effected an entry, but
13 has neither been lawfully admitted nor has been
14 physically present in the United States continu-
15 ously for the 2-year period immediately prior to
16 the commencement of removal proceedings
17 under this Act or deportation proceedings
18 against the alien, the Secretary of Homeland
19 Security, in the exercise of the Secretary’s dis-
20 cretion, may decide not to apply paragraph (8)
21 and detain the alien without any limitations ex-
22 cept those which the Secretary shall adopt by
23 regulation.

24 “(9) JUDICIAL REVIEW.—Without regard to the
25 place of confinement, judicial review of any action or

1 decision pursuant to paragraphs (6), (7), or (8) shall
2 be available exclusively in habeas corpus proceedings
3 instituted in the United States District Court for the
4 District of Columbia, and only if the alien has ex-
5 hausted all administrative remedies (statutory and
6 regulatory) available to the alien as of right.”.

7 **SEC. 202. DETENTION OF ALIENS DURING REMOVAL PRO-**
8 **CEEDINGS.**

9 (a) DETENTION AUTHORITY.—Section 235 of the
10 Immigration and Nationality Act (8 U.S.C. 1225) is
11 amended by adding at the end the following:

12 “(e) LENGTH OF DETENTION.—

13 “(1) IN GENERAL.—With regard to length of
14 detention, an alien may be detained under this sec-
15 tion, without limitation, until the alien is subject to
16 an administratively final order of removal.

17 “(2) CONSTRUCTION.—The length of detention
18 under this section shall not affect the validity of any
19 detention under section 241.

20 “(f) JUDICIAL REVIEW.—Without regard to the place
21 of confinement, judicial review of any action or decision
22 made pursuant to subsection (e) shall be available exclu-
23 sively in a habeas corpus proceeding instituted in the
24 United States District Court for the District of Columbia
25 and only if the alien has exhausted all administrative rem-

1 edies (statutory and nonstatutory) available to the alien
2 as of right.”.

3 (b) JUDICIAL REVIEW.—Section 236(e) of such Act
4 (8 U.S.C. 1226(e)) is amended by adding at the end the
5 following: “Without regard to the place of confinement,
6 judicial review of any action or decision made pursuant
7 to subsection (f) shall be available exclusively in a habeas
8 corpus proceeding instituted in the United States District
9 Court for the District of Columbia and only if the alien
10 has exhausted all administrative remedies (statutory and
11 nonstatutory) available to the alien as of right.”.

12 (c) LENGTH OF DETENTION.—Section 236 of such
13 Act (8 U.S.C. 1226) is amended by adding at the end the
14 following:

15 “(f) LENGTH OF DETENTION.—

16 “(1) IN GENERAL.—With regard to length of
17 detention, an alien may be detained under this sec-
18 tion, without limitation, until the alien is subject to
19 an administratively final order of removal.

20 “(2) CONSTRUCTION.—The length of detention
21 under this section shall not affect the validity of any
22 detention under section 241 of this Act.”.

23 **SEC. 203. SEVERABILITY.**

24 If any provision of this subtitle, or any amendment
25 made by this subtitle, or the application of any such provi-

1 sion to any person or circumstance, is held to be invalid
2 for any reason, the remainder of this subtitle, and of the
3 amendments made by this subtitle, and the application of
4 the provisions and of the amendments made by this sub-
5 title to any other person or circumstance, shall not be af-
6 fected by such holding.

7 **SEC. 204. EFFECTIVE DATES.**

8 (a) SECTION 201.—The amendments made by section
9 201 shall take effect on the date of the enactment of this
10 Act, and section 241 of the Immigration and Nationality
11 Act, as amended, shall apply to—

12 (1) all aliens subject to a final administrative
13 removal, deportation, or exclusion order that was
14 issued before, on, or after the date of the enactment
15 of this Act; and

16 (2) acts and conditions occurring or existing be-
17 fore, on, or after the date of the enactment of this
18 Act.

19 (b) SECTION 202.—The amendments made by sec-
20 tion 202 shall take effect upon the date of the enactment
21 of this Act, and sections 235 and 236 of the Immigration
22 and Nationality Act, as amended, shall apply to any alien
23 in detention under provisions of such sections on or after
24 the date of the enactment of this Act.

1 **Subtitle B—Removal of Alien Gang**
2 **Members**

3 **SEC. 211. RENDERING INADMISSIBLE AND DEPORTABLE**
4 **ALIENS PARTICIPATING IN CRIMINAL**
5 **STREET GANGS.**

6 (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1182(a)(2)) is
8 amended by adding at the end the following:

9 “(J) CRIMINAL STREET GANG PARTICIPA-
10 TION.—

11 “(i) IN GENERAL.—Any alien is inad-
12 missible if—

13 “(I) the alien has been removed
14 under section 237(a)(2)(F); or

15 “(II) the consular officer or the
16 Secretary of Homeland Security
17 knows, or has reasonable ground to
18 believe that the alien—

19 “(aa) is a member of a
20 criminal street gang and has
21 committed, conspired, or threat-
22 ened to commit, or seeks to enter
23 the United States to engage sole-
24 ly, principally, or incidentally in,

1 a gang crime or any other unlaw-
2 ful activity; or

3 “(bb) is a member of a
4 criminal street gang designated
5 under section 219A.

6 “(ii) DEFINITIONS.—For purposes of
7 this subparagraph:

8 “(I) CRIMINAL STREET GANG.—
9 The term ‘criminal street gang’ means
10 a formal or informal group or associa-
11 tion of 3 or more individuals, who
12 commit 2 or more gang crimes (one of
13 which is a crime of violence, as de-
14 fined in section 16 of title 18, United
15 States Code) in 2 or more separate
16 criminal episodes in relation to the
17 group or association.

18 “(II) GANG CRIME.—The term
19 ‘gang crime’ means conduct consti-
20 tuting any Federal or State crime,
21 punishable by imprisonment for one
22 year or more, in any of the following
23 categories:

1 “(aa) A crime of violence (as
2 defined in section 16 of title 18,
3 United States Code).

4 “(bb) A crime involving ob-
5 struction of justice, tampering
6 with or retaliating against a wit-
7 ness, victim, or informant, or
8 burglary.

9 “(cc) A crime involving the
10 manufacturing, importing, dis-
11 tributing, possessing with intent
12 to distribute, or otherwise dealing
13 in a controlled substance or listed
14 chemical (as those terms are de-
15 fined in section 102 of the Con-
16 trolled Substances Act (21
17 U.S.C. 802)).

18 “(dd) Any conduct punish-
19 able under section 844 of title
20 18, United States Code (relating
21 to explosive materials), sub-
22 section (d), (g)(1) (where the un-
23 derlying conviction is a violent
24 felony (as defined in section
25 924(e)(2)(B) of such title) or is a

1 serious drug offense (as defined
2 in section 924(e)(2)(A)), (i), (j),
3 (k), (o), (p), (q), (u), or (x) of
4 section 922 of such title (relating
5 to unlawful acts), or subsection
6 (b), (c), (g), (h), (k), (l), (m), or
7 (n) of section 924 of such title
8 (relating to penalties), section
9 930 of such title (relating to pos-
10 session of firearms and dan-
11 gerous weapons in Federal facili-
12 ties), section 931 of such title
13 (relating to purchase, ownership,
14 or possession of body armor by
15 violent felons), sections 1028 and
16 1029 of such title (relating to
17 fraud and related activity in con-
18 nection with identification docu-
19 ments or access devices), section
20 1952 of such title (relating to
21 interstate and foreign travel or
22 transportation in aid of racket-
23 teering enterprises), section 1956
24 of such title (relating to the laun-
25 dering of monetary instruments),

1 section 1957 of such title (relat-
2 ing to engaging in monetary
3 transactions in property derived
4 from specified unlawful activity),
5 or sections 2312 through 2315 of
6 such title (relating to interstate
7 transportation of stolen motor ve-
8 hicles or stolen property).

9 “(ee) Any conduct punish-
10 able under section 274 (relating
11 to bringing in and harboring cer-
12 tain aliens), section 277 (relating
13 to aiding or assisting certain
14 aliens to enter the United
15 States), or section 278 (relating
16 to importation of alien for im-
17 moral purpose) of this Act.”.

18 (b) DEPORTABLE.—Section 237(a)(2) of the Immi-
19 gration and Nationality Act (8 U.S.C. 1227(a)(2)) is
20 amended by adding at the end the following:

21 “(F) CRIMINAL STREET GANG PARTICIPA-
22 TION.—

23 “(i) IN GENERAL.—Any alien is de-
24 portable who—

1 “(I) is a member of a criminal
2 street gang and is convicted of com-
3 mitting, or conspiring, threatening, or
4 attempting to commit, a gang crime;
5 or

6 “(II) is determined by the Sec-
7 retary of Homeland Security to be a
8 member of a criminal street gang des-
9 ignated under section 219A.

10 “(ii) DEFINITIONS.—For purposes of
11 this subparagraph, the terms ‘criminal
12 street gang’ and ‘gang crime’ have the
13 meaning given such terms in section
14 212(a)(2)(J)(ii).”.

15 (c) DESIGNATION OF CRIMINAL STREET GANGS.—

16 (1) IN GENERAL.—Chapter 2 of title II of the
17 Immigration and Nationality Act (8 U.S.C. 1181 et
18 seq.) is amended by adding at the end the following:

19 “DESIGNATION OF CRIMINAL STREET GANGS

20 “SEC. 219A. (a) DESIGNATION.—

21 “(1) IN GENERAL.—The Attorney General is
22 authorized to designate a group or association as a
23 criminal street gang in accordance with this sub-
24 section if the Attorney General finds that the group
25 or association meets the criteria described in section
26 212(a)(2)(J)(ii)(I).

1 “(2) PROCEDURE.—

2 “(A) NOTICE.—

3 “(i) TO CONGRESSIONAL LEADERS.—

4 Seven days before making a designation
5 under this subsection, the Attorney Gen-
6 eral shall, by classified communication, no-
7 tify the Speaker and Minority Leader of
8 the House of Representatives, the Presi-
9 dent pro tempore, Majority Leader, and
10 Minority Leader of the Senate, and the
11 members of the relevant committees of the
12 House of Representatives and the Senate,
13 in writing, of the intent to designate a
14 group or association under this subsection,
15 together with the findings made under
16 paragraph (1) with respect to that group
17 or association, and the factual basis there-
18 for.

19 “(ii) PUBLICATION IN FEDERAL REG-
20 ISTER.—The Attorney shall publish the
21 designation in the Federal Register seven
22 days after providing the notification under
23 clause (i).

24 “(B) EFFECT OF DESIGNATION.—

1 “(i) A designation under this sub-
2 section shall take effect upon publication
3 under subparagraph (A)(ii).

4 “(ii) Any designation under this sub-
5 section shall cease to have effect upon an
6 Act of Congress disapproving such des-
7 ignation.

8 “(3) RECORD.—In making a designation under
9 this subsection, the Attorney General shall create an
10 administrative record.

11 “(4) PERIOD OF DESIGNATION.—

12 “(A) IN GENERAL.—A designation under
13 this subsection shall be effective for all purposes
14 until revoked under paragraph (5) or (6) or set
15 aside pursuant to subsection (b).

16 “(B) REVIEW OF DESIGNATION UPON PE-
17 TITION.—

18 “(i) IN GENERAL.—The Attorney
19 General shall review the designation of a
20 criminal street gang under the procedures
21 set forth in clauses (iii) and (iv) if the des-
22 ignated gang or association files a petition
23 for revocation within the petition period
24 described in clause (ii).

1 “(ii) PETITION PERIOD.—For pur-
2 poses of clause (i)—

3 “(I) if the designated gang or as-
4 sociation has not previously filed a pe-
5 tition for revocation under this sub-
6 paragraph, the petition period begins
7 2 years after the date on which the
8 designation was made; or

9 “(II) if the designated gang or
10 association has previously filed a peti-
11 tion for revocation under this sub-
12 paragraph, the petition period begins
13 2 years after the date of the deter-
14 mination made under clause (iv) on
15 that petition.

16 “(iii) PROCEDURES.—Any criminal
17 street gang that submits a petition for rev-
18 ocation under this subparagraph must pro-
19 vide evidence in that petition that the rel-
20 evant circumstances described in para-
21 graph (1) are sufficiently different from
22 the circumstances that were the basis for
23 the designation such that a revocation with
24 respect to the gang is warranted.

25 “(iv) DETERMINATION.—

1 “(I) IN GENERAL.—Not later
2 than 180 days after receiving a peti-
3 tion for revocation submitted under
4 this subparagraph, the Attorney Gen-
5 eral shall make a determination as to
6 such revocation.

7 “(II) PUBLICATION OF DETER-
8 MINATION.—A determination made by
9 the Attorney General under this
10 clause shall be published in the Fed-
11 eral Register.

12 “(III) PROCEDURES.—Any rev-
13 ocation by the Attorney General shall
14 be made in accordance with para-
15 graph (6).

16 “(C) OTHER REVIEW OF DESIGNATION.—

17 “(i) IN GENERAL.—If in a 5-year pe-
18 riod no review has taken place under sub-
19 paragraph (B), the Attorney General shall
20 review the designation of the criminal
21 street gang in order to determine whether
22 such designation should be revoked pursu-
23 ant to paragraph (6).

24 “(ii) PROCEDURES.—If a review does
25 not take place pursuant to subparagraph

1 (B) in response to a petition for revocation
2 that is filed in accordance with that sub-
3 paragraph, then the review shall be con-
4 ducted pursuant to procedures established
5 by the Attorney General. The results of
6 such review and the applicable procedures
7 shall not be reviewable in any court.

8 “(iii) PUBLICATION OF RESULTS OF
9 REVIEW.—The Attorney General shall pub-
10 lish any determination made pursuant to
11 this subparagraph in the Federal Register.

12 “(5) REVOCATION BY ACT OF CONGRESS.—The
13 Congress, by an Act of Congress, may block or re-
14 voke a designation made under paragraph (1).

15 “(6) REVOCATION BASED ON CHANGE IN CIR-
16 CUMSTANCES.—

17 “(A) IN GENERAL.—The Attorney General
18 may revoke a designation made under para-
19 graph (1) at any time, and shall revoke a des-
20 ignation upon completion of a review conducted
21 pursuant to subparagraphs (B) and (C) of
22 paragraph (4) if the Attorney General finds
23 that—

1 “(i) the circumstances that were the
2 basis for the designation have changed in
3 such a manner as to warrant revocation; or

4 “(ii) the national security of the
5 United States warrants a revocation.

6 “(B) PROCEDURE.—The procedural re-
7 quirements of paragraphs (2) and (3) shall
8 apply to a revocation under this paragraph. Any
9 revocation shall take effect on the date specified
10 in the revocation or upon publication in the
11 Federal Register if no effective date is specified.

12 “(7) EFFECT OF REVOCATION.—The revocation
13 of a designation under paragraph (5) or (6) shall
14 not affect any action or proceeding based on conduct
15 committed prior to the effective date of such revoca-
16 tion.

17 “(8) USE OF DESIGNATION IN HEARING.—If a
18 designation under this subsection has become effec-
19 tive under paragraph (2)(B) an alien in a removal
20 proceeding shall not be permitted to raise any ques-
21 tion concerning the validity of the issuance of such
22 designation as a defense or an objection at any hear-
23 ing.

24 “(b) JUDICIAL REVIEW OF DESIGNATION.—

1 “(1) IN GENERAL.—Not later than 30 days
2 after publication of the designation in the Federal
3 Register, a group or association designated as a
4 criminal street gang may seek judicial review of the
5 designation in the United States Court of Appeals
6 for the District of Columbia Circuit.

7 “(2) BASIS OF REVIEW.—Review under this
8 subsection shall be based solely upon the administra-
9 tive record.

10 “(3) SCOPE OF REVIEW.—The Court shall hold
11 unlawful and set aside a designation the court finds
12 to be—

13 “(A) arbitrary, capricious, an abuse of dis-
14 cretion, or otherwise not in accordance with
15 law;

16 “(B) contrary to constitutional right,
17 power, privilege, or immunity;

18 “(C) in excess of statutory jurisdiction, au-
19 thority, or limitation, or short of statutory
20 right;

21 “(D) lacking substantial support in the ad-
22 ministrative record taken as a whole; or

23 “(E) not in accord with the procedures re-
24 quired by law.

1 “(4) JUDICIAL REVIEW INVOKED.—The pend-
2 ency of an action for judicial review of a designation
3 shall not affect the application of this section, unless
4 the court issues a final order setting aside the des-
5 ignation.

6 “(c) RELEVANT COMMITTEE DEFINED.—As used in
7 this section, the term ‘relevant committees’ means the
8 Committees on the Judiciary of the House of Representa-
9 tives and of the Senate.”.

10 (2) CLERICAL AMENDMENT.—The table of con-
11 tents for the Immigration and Nationality Act (8
12 U.S.C. 1101 et seq.) is amended by inserting after
13 the item relating to section 219 the following:

 “Sec. 219A. Designation of criminal street gangs.”.

14 **SEC. 212. MANDATORY DETENTION OF SUSPECTED CRIMI-**
15 **NAL STREET GANG MEMBERS.**

16 (a) IN GENERAL.—Section 236(c)(1)(D) of the Im-
17 migration and Nationality Act (8 U.S.C. 1226(c)(1)(D))
18 is amended—

19 (1) by inserting “or 212(a)(2)(J)” after
20 “212(a)(3)(B)”; and

21 (2) by inserting “or 237(a)(2)(F)” before
22 “237(a)(4)(B)”.

23 (b) ANNUAL REPORT.—Not later than March 1 of
24 each year (beginning 1 year after the date of the enact-
25 ment of this Act), the Secretary of Homeland Security,

1 after consultation with the appropriate Federal agencies,
2 shall submit a report to the Committees on the Judiciary
3 of the House of Representatives and of the Senate on the
4 number of aliens detained under the amendments made
5 by subsection (a).

6 **SEC. 213. INELIGIBILITY FROM PROTECTION FROM RE-**
7 **MOVAL AND ASYLUM.**

8 (a) INAPPLICABILITY OF RESTRICTION ON REMOVAL
9 TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the
10 Immigration and Nationality Act (8 U.S.C.
11 1251(b)(3)(B)) is amended, in the matter preceding
12 clause (i), by inserting “who is described in section
13 212(a)(2)(J)(i) or section 237(a)(2)(F)(i) or who is” after
14 “to an alien”.

15 (b) INELIGIBILITY FOR ASYLUM.—Section
16 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is
17 amended—

18 (1) in clause (v), by striking “or” at the end;

19 (2) by redesignating clause (vi) as clause (vii);

20 and

21 (3) by inserting after clause (v) the following:

22 “(vi) the alien is described in section
23 212(a)(2)(J)(i) or section 237(a)(2)(F)(i)
24 (relating to participation in criminal street
25 gangs); or”.

1 (c) DENIAL OF REVIEW OF DETERMINATION OF IN-
2 ELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—
3 Section 244(c)(2) of such Act (8 U.S.C. 1254(c)(2)) is
4 amended by adding at the end the following:

5 “(C) LIMITATION ON JUDICIAL REVIEW.—
6 There shall be no judicial review of any finding
7 under subparagraph (B) that an alien is in de-
8 scribed in section 208(b)(2)(A)(vi).”.

9 **Subtitle C—Miscellaneous**

10 **SEC. 221. FEDERAL AFFIRMATION OF ASSISTANCE IN IMMI-**
11 **GRATION LAW ENFORCEMENT BY STATES**
12 **AND POLITICAL SUBDIVISIONS OF STATES.**

13 (a) IN GENERAL.—Notwithstanding any other provi-
14 sion of law and reaffirming the existing inherent authority
15 of States, law enforcement personnel of a State or a polit-
16 ical subdivision of a State have the inherent authority of
17 a sovereign entity to investigate, identify, apprehend, ar-
18 rest, detain, or transfer to Federal custody aliens in the
19 United States (including the transportation of such aliens
20 across State lines to detention centers), for the purposes
21 of assisting in the enforcement of the immigration laws
22 of the United States in the course of carrying out routine
23 duties. This State authority has never been displaced or
24 preempted by Congress.

1 (b) CONSTRUCTION.—Nothing in this section may be
2 construed to require law enforcement personnel of a State
3 or political subdivision of a State to—

4 (1) report the identity of a victim of, or a wit-
5 ness to, a criminal offense to the Secretary of Home-
6 land Security for immigration enforcement purposes;
7 or

8 (2) arrest such victim or witness for a violation
9 of the immigration laws of the United States.

10 **SEC. 222. FINANCIAL ASSISTANCE TO STATE AND LOCAL**
11 **LAW ENFORCEMENT AGENCIES ASSISTING**
12 **WITH BORDER SECURITY AND ENFORCE-**
13 **MENT OF IMMIGRATION LAWS.**

14 (a) GRANTS FOR STATE AND LOCAL LAW ENFORCE-
15 MENT ACTIVITIES.—From amounts made available to
16 make grants under this section, the Secretary of Home-
17 land Security shall make grants to States and political
18 subdivisions of States for expenses described in subsection
19 (c).

20 (b) ELIGIBLE RECIPIENTS.—To be eligible to receive
21 a grant under this section, a State or political subdivision
22 of a State must have the authority to, and have in effect
23 the policy and practice to, assist with border security mis-
24 sions and the enforcement of immigration laws of the

1 United States in the course of carrying out such agency's
2 routine law enforcement duties.

3 (c) AUTHORIZED USE OF FUNDS.—Funds received
4 under this section may be used for the following:

5 (1) Costs of training associated with participa-
6 tion in programs described in section 287(g) of the
7 immigration and nationality act (8 U.S.C. 1357(g))
8 under which certain officers or employees of the
9 state or political subdivision are trained to perform
10 certain functions of an immigration officer, includ-
11 ing—

12 (A) costs of travel and transportation to
13 locations where such training is provided, in-
14 cluding mileage and related allowances for the
15 use of a privately owned automobile;

16 (B) a daily per diem for lodging, meals,
17 and other necessary expenses resulting from
18 participation; and

19 (C) costs of securing temporary replace-
20 ments for personnel traveling to, and partici-
21 pating in, such training.

22 (2) Procurement of equipment, technology, fa-
23 cilities, and other products that facilitate and are di-
24 rectly related to investigating, apprehending, arrest-
25 ing, detaining, or transporting immigration law vio-

1 lators, including additional administrative costs re-
2 lated to these functions.

3 (d) GAO AUDIT.—Not later than 3 years after the
4 date of the enactment of this Act, the Comptroller General
5 of the United States shall conduct an audit of funds dis-
6 tributed to States and political subdivisions of States
7 under this section.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated for grants under this
10 section \$250,000,000 for each fiscal year.

11 **SEC. 223. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE**
12 **ON CRIMINAL OR SECURITY GROUNDS.**

13 (a) IN GENERAL.—Section 238(b) of the Immigra-
14 tion and Nationality Act (8 U.S.C. 1228(b)) is amended—

15 (1) in paragraph (1)—

16 (A) by striking “Attorney General” and in-
17 serting “Secretary of Homeland Security in the
18 exercise of the Secretary’s discretion”; and

19 (B) by striking “set forth in this sub-
20 section or” and inserting “set forth in this sub-
21 section, in lieu of removal proceedings under”;

22 (2) in paragraph (3)—

23 (A) by striking “Attorney General” and in-
24 serting “Secretary of Homeland Security”; and

1 (B) by striking “paragraph (1) until 14
2 calendar days” and inserting “paragraph (1) or
3 (3) until 7 calendar days”;

4 (3) in paragraph (4), by striking “Attorney
5 General” each place it appears and inserting “Sec-
6 retary of Homeland Security”;

7 (4) in paragraph (5)—

8 (A) by striking “described in this section”
9 and inserting “described in paragraph (1) or
10 (2)”; and

11 (B) by striking “the Attorney General may
12 grant in the Attorney General’s discretion” and
13 inserting “the Secretary of Homeland Security
14 or the Attorney General may grant, in the dis-
15 cretion of the Secretary or Attorney General, in
16 any proceeding”;

17 (5) by redesignating paragraphs (3), (4), and
18 (5) as paragraphs (4), (5), and (6), respectively; and

19 (6) by inserting after paragraph (2) the fol-
20 lowing new paragraph:

21 “(3) The Secretary of Homeland Security, in
22 the exercise of the Secretary’s discretion, may deter-
23 mine inadmissibility under section 212(a)(2) (relat-
24 ing to criminal offenses) and issue an order of re-
25 moval pursuant to the procedures set forth in this

1 subsection, in lieu of removal proceedings under sec-
2 tion 240, with respect to an alien who—

3 “(A) has not been admitted or paroled;

4 “(B) has not been found to have a credible
5 fear of persecution pursuant to the procedures
6 set forth in section 235(b)(1)(B); and

7 “(C) is not eligible for a waiver of inadmis-
8 sibility or relief from removal.”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall take effect on the date of the enact-
11 ment of this Act but shall not apply to aliens who are
12 in removal proceedings under section 240 of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1229a) as of such date.

14 **SEC. 224. REMOVING DRUNK DRIVERS.**

15 (a) IN GENERAL.—101(a)(43)(F) of the Immigration
16 and Nationality Act (8 U.S.C. 1101(a)(43)(F)) is amend-
17 ed by inserting “, including a third drunk driving convic-
18 tion, regardless of the States in which the convictions oc-
19 curred, and regardless of whether the offenses are deemed
20 to be misdemeanors or felonies under State or Federal
21 law,” after “offense)”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall take effect on the date of the enact-
24 ment of this Act and shall apply to convictions entered
25 before, on, or after such date.

1 **TITLE III—EMPLOYMENT**
2 **ELIGIBILITY VERIFICATION**
3 **Subtitle A—Illegal Immigration En-**
4 **forcement and Social Security**
5 **Protection Act of 2007**

6 **SECTION 301. SHORT TITLE.**

7 This subtitle may be cited as the “Illegal Immigration
8 Enforcement and Social Security Protection Act of 2007”.

9 **SEC. 302. AMENDMENTS TO THE SOCIAL SECURITY ACT RE-**
10 **LATING TO IDENTIFICATION OF INDIVID-**
11 **UALS.**

12 (a) ANTIFRAUD MEASURES FOR SOCIAL SECURITY
13 CARDS.—Section 205(c)(2)(G) of the Social Security Act
14 (42 U.S.C. 405(c)(2)(G)) is amended—

15 (1) by inserting “(i)” after “(G)”;

16 (2) by striking “banknote paper” and inserting
17 “durable plastic or similar material”; and

18 (3) by adding at the end the following new
19 clauses:

20 “(ii) Each Social Security card issued under this sub-
21 paragraph shall include an encrypted machine-readable
22 electronic identification strip which shall be unique to the
23 individual to whom the card is issued. The Commissioner
24 shall develop such electronic identification strip in con-
25 sultation with the Secretary of Homeland Security, so as

1 to enable employers to use such strip in accordance with
2 section 274A(a)(1)(B) of the Immigration and Nationality
3 Act (8 U.S.C. 1324a(a)(1)(B)) to obtain access to the Em-
4 ployment Eligibility Database established by such Sec-
5 retary pursuant to section 4 of such Act with respect to
6 the individual to whom the card is issued.

7 “(iii) Each Social Security card issued under this
8 subparagraph shall contain—

9 “(I) physical security features designed to pre-
10 vent tampering, counterfeiting, or duplication of the
11 card for fraudulent purposes; and

12 “(II) a disclaimer stating the following: ‘This
13 card shall not be used for the purpose of identifica-
14 tion.’.

15 “(iv) The Commissioner shall provide for the issuance
16 (or reissuance) to each individual who—

17 “(I) has been assigned a Social Security ac-
18 count number under subparagraph (B),

19 “(II) has attained the minimum age applicable,
20 in the jurisdiction in which such individual engages
21 in employment, for legally engaging in such employ-
22 ment, and

23 “(III) files application for such card under this
24 clause in such form and manner as shall be pre-
25 scribed by the Commissioner,

1 a Social Security card which meets the preceding require-
2 ments of this subparagraph and which includes a recent
3 digitized photograph of the individual to whom the card
4 is issued.

5 “(v) The Commissioner shall maintain an ongoing ef-
6 fort to develop measures in relation to the Social Security
7 card and the issuance thereof to preclude fraudulent use
8 thereof.”.

9 (b) SHARING OF INFORMATION WITH THE SEC-
10 RETARY OF HOMELAND SECURITY.—Section 205(c)(2) of
11 such Act is amended by adding at the end the following
12 new subparagraph:

13 “(I) Upon the issuance of a Social Security account
14 number under subparagraph (B) to any individual or the
15 issuance of a Social Security card under subparagraph (G)
16 to any individual, the Commissioner of Social Security
17 shall transmit to the Secretary of Homeland Security such
18 information received by the Commissioner in the individ-
19 ual’s application for such number or such card as such
20 Secretary determines necessary and appropriate for ad-
21 ministration of the Illegal Immigration Enforcement and
22 Social Security Protection Act of 2007. Such information
23 shall be used solely for inclusion in the Employment Eligi-
24 bility Database established pursuant to section 4 of such
25 Act.”.

1 (c) EFFECTIVE DATES.—The amendment made by
2 subsection (a) shall apply with respect to Social Security
3 cards issued after 2 years after the date of the enactment
4 of this Act. The amendment made by subsection (b) shall
5 apply with respect to the issuance of Social Security ac-
6 count numbers and Social Security cards after 2 years
7 after the date of the enactment of this Act.

8 **SEC. 303. EMPLOYMENT ELIGIBILITY DATABASE.**

9 (a) IN GENERAL.—The Secretary of Homeland Secu-
10 rity shall establish and maintain an Employment Eligi-
11 bility Database. The Database shall include data com-
12 prised of the citizenship status of individuals and the work
13 and residency eligibility information (including expiration
14 dates) with respect to individuals who are not citizens or
15 nationals of the United States but are authorized to work
16 in the United States. Such data shall include all such data
17 maintained by the Department of Homeland Security as
18 of the date of the establishment of such database and in-
19 formation obtained from the Commissioner of Social Secu-
20 rity pursuant to section 205(c)(2)(I) of the Social Security
21 Act. The Secretary shall maintain ongoing consultations
22 with the Commissioner to ensure efficient and effective op-
23 eration of the Database.

24 (b) INCORPORATION OF ONGOING PILOT PRO-
25 GRAMS.—To the extent that the Secretary determines ap-

1 appropriate in furthering the purposes of subsection (a), the
2 Secretary may incorporate the information, processes, and
3 procedures employed in connection with the Citizen Attes-
4 tation Verification Pilot Program and the Basic Pilot Pro-
5 gram into the operation and maintenance of the Database
6 under subsection (a).

7 (c) CONFIDENTIALITY.—

8 (1) IN GENERAL.—No officer or employee of
9 the Department of Homeland Security shall have ac-
10 cess to any information contained in the Database
11 for any purpose other than—

12 (A) the establishment of a system of
13 records necessary for the effective administra-
14 tion of this Act; or

15 (B) any other purpose the Secretary of
16 Homeland Security deems to be in the national
17 security interests of the United States.

18 (2) RESTRICTION.—The Secretary shall restrict
19 access to such information to officers and employees
20 of the United States whose duties or responsibilities
21 require access for the purposes described in para-
22 graph (1).

23 (3) OTHER SAFEGUARDS.—The Secretary shall
24 provide such other safeguards as the Secretary de-
25 termines to be necessary or appropriate to protect

1 the confidentiality of information contained in the
2 Database.

3 (4) CRIMINAL PENALTIES.—Whoever accesses
4 or uses information in the Employment Eligibility
5 Database without authority to do so, or for an unau-
6 thorized purpose, shall be fined under title 18,
7 United States Code, imprisoned for a term of not
8 less than 5, and not more than 7, years, or both.

9 (d) DEADLINE FOR MEETING REQUIREMENTS.—The
10 Secretary shall complete the establishment of the Data-
11 base and provide for the efficient and effective operation
12 of the Database in accordance with this section not later
13 than 2 years after the date of the enactment of this Act.

14 **SEC. 304. REQUIREMENTS RELATING TO INDIVIDUALS**
15 **COMMENCING WORK IN THE UNITED STATES.**

16 (a) REQUIREMENTS FOR EMPLOYERS, RECRUITERS,
17 AND REFERRERS.—Section 274A(a)(1)(B) of the Immi-
18 gration and Nationality Act (8 U.S.C. 1324a(a)(1)(B)) is
19 amended to read as follows:

20 “(B)(i)(I) to hire for employment in the
21 United States an individual unless the person
22 or entity requires the employee to display a So-
23 cial Security card issued to such individual pur-
24 suant to section 205(c)(2)(G) of the Social Se-
25 curity Act which bears a photograph of such in-

1 dividual and that such individual is authorized
2 to work in the United States. Such presentation
3 and verification shall be made in accordance
4 with procedures prescribed by the Secretary of
5 Homeland Security for the purposes of ensuring
6 against fraudulent use of the card and accurate
7 and prompt verification of the authorization of
8 such individual to work in the United States; or
9 (II) if the person or entity is an agricultural as-
10 sociation, agricultural employer, or farm labor
11 contractor (as defined in section 3 of the Mi-
12 grant and Seasonal Agricultural Worker Protec-
13 tion Act), to hire, or to recruit or refer for a
14 fee, for employment in the United States an in-
15 dividual unless the person or entity requires the
16 employee to display a Social Security card
17 issued to such individual pursuant to section
18 205(c)(2)(G) of the Social Security Act which
19 bears a photograph of such individual and that
20 such individual is authorized to work in the
21 United States. Such presentation and
22 verification shall be made in accordance with
23 procedures prescribed by the Secretary of
24 Homeland Security for the purposes of ensuring
25 against fraudulent use of the card and accurate

1 and prompt verification of the authorization of
2 such individual to work in the United States.

3 “(ii) The verification procedures described
4 in clause (i) shall include use of—

5 “(I) a phone verification system which
6 shall be established by the Secretary; or

7 “(II) a card-reader verification system
8 employing a device approved by the Sec-
9 retary as capable of reading the electronic
10 identification strip borne by the card so as
11 to verify the identity of the card holder
12 and the card holder’s authorization to
13 work, and which is made available at mini-
14 mal cost to the person or entity.

15 “(iii) The Secretary shall ensure that the
16 phone verification system described in subclause
17 (I) of clause (ii) is as secure and effective as
18 the card-reader verification system described in
19 subclause (II) of such clause.

20 “(iv) The Secretary shall ensure that, by
21 means of such procedures, the person or entity
22 will have such access to the Employment Eligi-
23 bility Database established and operated by the
24 Secretary pursuant to section 303 of the Secure
25 Borders FIRST (For Integrity, Reform, Safety,

1 and Anti-Terrorism) Act of 2007 as to enable
2 the person or entity to obtain information, re-
3 lating to the citizenship, residency, and work
4 eligibility of the individual, which is necessary
5 to inform the person or entity as to whether the
6 individual is authorized to work in the United
7 States.

8 “(v) A person or entity that establishes
9 that the person or entity has complied in good
10 faith with the requirements of this subpara-
11 graph with respect to the hiring, recruiting, or
12 referral for employment of an alien in the
13 United States shall not be liable for hiring an
14 unauthorized alien, if—

15 “(I) such hiring, recruitment, or refer-
16 ral occurred due to an error in the phone
17 verification system, the card-reader
18 verification system, or the Employment
19 Eligibility Database which was unknown to
20 the employer at the time of such hiring;
21 and

22 “(II) the employer terminates that
23 employment of the alien upon being in-
24 formed of the error.”.

1 (b) CONFORMING AMENDMENTS.—Section 274A of
2 the Immigration and Nationality Act (8 U.S.C. 1324a) is
3 amended—

4 (1) in subsection (a), by striking paragraphs
5 (3), (5), and (6) and redesignating paragraphs (4)
6 and (7) as paragraphs (3) and (4), respectively;

7 (2) in subsection (b)—

8 (A) by striking “Attorney General” each
9 place such term appears and inserting “Sec-
10 retary of Homeland Security”;

11 (B) by amending the matter preceding
12 paragraph (2) to read as follows:

13 “(b) VERIFICATION FORMS.—

14 “(1) ATTESTATION OF COMPLIANCE.—The
15 verification procedures prescribed under subsection
16 (a)(1)(B) shall include an attestation, made under
17 penalty of perjury and on a form designated or es-
18 tablished by the Secretary of Homeland Security by
19 regulation, that the employer, recruiter, or referrer
20 has complied with such procedures.”; and

21 (C) by striking paragraph (6);

22 (3) by striking subsection (d); and

23 (4) by amending subsection (h)(3) to read as
24 follows:

1 “(3) DEFINITIONS.—For purposed of this sec-
2 tion:

3 “(A) The term ‘authorized to work in the
4 United States’, when applied to an individual,
5 means that the individual is not an unauthor-
6 ized alien.

7 “(B) The term ‘employee’ shall have the
8 meaning given such term in section 210(j) of
9 the Social Security Act (42 U.S.C. 410(j)).

10 “(C) The term ‘unauthorized alien’ means,
11 with respect to the employment of an alien at
12 a particular time, that the alien is not at that
13 time—

14 “(i) an alien lawfully admitted for
15 permanent residence; or

16 “(ii) authorized to be so employed by
17 this Act or by the Secretary of Homeland
18 Security.”.

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect 2 years after the date of the
21 enactment of this Act and shall apply to employment of
22 any individual in any capacity commencing on or after
23 such effective date.

1 **SEC. 305. COMPLIANCE.**

2 Section 274A of the Immigration and Nationality Act
3 (8 U.S.C. 1324a) is amended—

4 (1) in subsection (e)(4)—

5 (A) in subparagraph (A), in the matter be-
6 fore clause (i), by inserting “, subject to para-
7 graphs (10) through (12),” after “in an
8 amount”;

9 (B) in subparagraph (A)(i), by striking
10 “not less than \$250 and not more than
11 \$2,000” and inserting “not less than \$5,000
12 and not more than \$7,500”;

13 (C) in subparagraph (A)(ii), by striking
14 “not less than \$2,000 and not more than
15 \$5,000” and inserting “not less than \$10,000
16 and not more than \$15,000”;

17 (D) in subparagraph (A)(iii), by striking
18 “not less than \$3,000 and not more than
19 \$10,000” and inserting “not less than \$25,000
20 and not more than \$40,000”; and

21 (E) by amending subparagraph (B) to read
22 as follows:

23 “(B) may require the person or entity to
24 take such other remedial action as is appro-
25 priate.”;

26 (2) in subsection (e)(5)—

1 (A) by inserting “, subject to paragraphs
2 (10) through (12),” after “in an amount”;

3 (B) by striking “\$100” and inserting
4 “\$1,000”;

5 (C) by striking “\$1,000” and inserting
6 “\$25,000”;

7 (D) by striking “the size of the business of
8 the employer being charged, the good faith of
9 the employer” and inserting “the good faith of
10 the employer being charged”; and

11 (E) by adding at the end the following sen-
12 tence: “Failure by a person or entity to utilize
13 the employment eligibility verification system as
14 required by law, or providing information to the
15 system that the person or entity knows or rea-
16 sonably believes to be false, shall be treated as
17 a violation of subsection (a)(1)(A).”;

18 (3) by adding at the end of subsection (e) the
19 following new paragraphs:

20 “(10) MITIGATION OF CIVIL MONEY PENALTIES
21 FOR SMALLER EMPLOYERS.—In the case of imposi-
22 tion of a civil penalty under paragraph (4)(A) with
23 respect to a violation of subsection (a)(1)(A) or
24 (a)(2) for hiring or continuation of employment by
25 an employer and in the case of imposition of a civil

1 penalty under paragraph (5) for a violation of sub-
2 section (a)(1)(B) for hiring by an employer, the dol-
3 lar amounts otherwise specified in the respective
4 paragraph shall be reduced as follows:

5 “(A) In the case of an employer with an
6 average of fewer than 26 full-time equivalent
7 employees (as defined by the Secretary of
8 Homeland Security), the amounts shall be re-
9 duced by 60 percent.

10 “(B) In the case of an employer with an
11 average of at least 26, but fewer than 101, full-
12 time equivalent employees (as so defined), the
13 amounts shall be reduced by 40 percent.

14 “(C) In the case of an employer with an
15 average of at least 101, but fewer than 251,
16 full-time equivalent employees (as so defined),
17 the amounts shall be reduced by 20 percent.

18 The last sentence of paragraph (4) shall apply under
19 this paragraph in the same manner as it applies
20 under such paragraph.

21 “(11) EXEMPTION FROM PENALTY FOR INITIAL
22 GOOD FAITH VIOLATION.—In the case of imposition
23 of a civil penalty under paragraph (4)(A) with re-
24 spect to a violation of subsection (a)(1)(A) or (a)(2)
25 for hiring or continuation of employment or recruit-

1 ment or referral by person or entity and in the case
2 of imposition of a civil penalty under paragraph (5)
3 for a violation of subsection (a)(1)(B) for hiring or
4 recruitment or referral by a person or entity, the
5 penalty otherwise imposed shall be waived if the vio-
6 lator establishes that it was the first such violation
7 of such provision by the violator and the violator
8 acted in good faith.

9 “(12) SAFE HARBOR FOR CONTRACTORS.—A
10 person or other entity shall not be liable for a pen-
11 alty under paragraph (4)(A) with respect to the vio-
12 lation of subsection (a)(1)(A), (a)(1)(B), or (a)(2)
13 with respect to the hiring or continuation of employ-
14 ment of an unauthorized alien by a subcontractor of
15 that person or entity unless the person or entity
16 knew that the subcontractor hired or continued to
17 employ such alien in violation of such subsection.”.

18 (4) by amending paragraph (1) of subsection (f)
19 to read as follows:

20 “(1) CRIMINAL PENALTY.—Any person or enti-
21 ty which engages in a pattern or practice of viola-
22 tions of subsection (a)(1) or (2) shall be fined not
23 more than \$50,000 for each unauthorized alien with
24 respect to which such a violation occurs, imprisoned
25 for not less than one year, or both, notwithstanding

1 the provisions of any other Federal law relating to
2 fine levels.”; and

3 (5) in subsection (f)(2), by striking “Attorney
4 General” each place it appears and inserting “Sec-
5 retary of Homeland Security”.

6 **SEC. 306. AUTHORIZATIONS OF APPROPRIATIONS.**

7 (a) DEPARTMENT OF HOMELAND SECURITY.—Ex-
8 cept as otherwise provided in this subtitle, there are au-
9 thorized to be appropriated to the Department of Home-
10 land Security for each fiscal year beginning on or after
11 October 1, 2007, such sums as may be necessary to carry
12 out this subtitle and the amendments made by this sub-
13 title, of which not less than \$100,000,000 shall be for the
14 purpose of carrying out section 274A(a)(1)(B) of the Im-
15 migration and Nationality Act (8 U.S.C. 1324a(a)(1)(B)),
16 as amended by section 305 of this Act.

17 (b) SOCIAL SECURITY ADMINISTRATION.—There are
18 authorized to be appropriated to the Social Security Ad-
19 ministration for each fiscal year beginning on or after Oc-
20 tober 1, 2007, such sums as are necessary to carry out
21 the amendments made by section 302.

22 **SEC. 307. RULES OF CONSTRUCTION.**

23 (a) IN GENERAL.—Nothing in this subtitle shall be
24 construed—

1 (1) to require the presentation of a Social Secu-
2 rity card for any purpose other than—

3 (A) for the administration and enforce-
4 ment of the Social Security laws of the United
5 States; or

6 (B) for the purpose of implementing and
7 enforcing this subtitle and the amendments
8 made by this subtitle; or

9 (2) to require the Social Security card to be
10 carried by an individual.

11 (b) NO NATIONAL IDENTIFICATION CARD.—It is the
12 policy of the United States that the Social Security card
13 shall not be used as a national identification card.

14 **Subtitle B—Employment Eligibility**
15 **Verification and Anti-Identity**
16 **Theft Act**

17 **SEC. 311. SHORT TITLE.**

18 This subtitle may be cited as the “Employment Eligi-
19 bility Verification and Anti-Identity Theft Act”.

20 **SEC. 312. REQUIRING AGENCIES TO SEND “NO-MATCH” LET-**
21 **TERS.**

22 (a) SOCIAL SECURITY ADMINISTRATION.—The Com-
23 missioner of the Social Security Administration shall send
24 a written notice to a person or entity each time that the
25 combination of name and Social Security account number

1 submitted by the person or entity for an individual does
2 not match Social Security Administration records.

3 (b) DEPARTMENT OF HOMELAND SECURITY.—The
4 Secretary of Homeland Security shall send a written no-
5 tice to a person or entity each time that such Secretary
6 determines that an immigration status document or em-
7 ployment authorization document presented or referenced
8 by an individual during the process of completing the at-
9 testations required by the person or entity for employment
10 eligibility verification was assigned to another person, or
11 that there is no agency record that the document was as-
12 signed to any person.

13 **SEC. 313. REQUIRING EMPLOYERS TO TAKE ACTION UPON**
14 **RECEIPT OF A “NO-MATCH” LETTER.**

15 Beginning on the date that is 6 months after the date
16 of the enactment of this Act, a person or entity that has
17 received a written notice under section 312 shall, within
18 3 business days of receiving such notice, verify the individ-
19 ual’s employment authorization and identity through the
20 verification system established under section 314.

21 **SEC. 314. VERIFICATION SYSTEM.**

22 Not later than 6 months after the date of enactment
23 of this Act, the Secretary of Homeland Security, in con-
24 sultation with the Commissioner of the Social Security Ad-
25 ministration, as appropriate, shall establish and admin-

1 ister a verification system through which persons or enti-
2 ties that have received written notice under section 312
3 shall verify an individual's employment authorization and
4 identity.

5 **SEC. 315. DESIGN AND OPERATION OF SYSTEM.**

6 The verification system established under section 314
7 shall be designed and operated—

8 (1) to maximize its reliability and ease of use,
9 consistent with insulating and protecting the privacy
10 and security of the underlying information;

11 (2) to respond to all required inquiries under
12 this subtitle regarding whether individuals are au-
13 thorized to be employed and to register all times
14 when such inquiries are not received;

15 (3) with appropriate administrative, technical,
16 and physical safeguards to prevent unauthorized dis-
17 closure of personal information; and

18 (4) to have reasonable safeguards against the
19 system's resulting in unlawful discriminatory prac-
20 tices based on national origin or citizenship status,
21 including—

22 (A) the selective or unauthorized use of the
23 system to verify eligibility;

24 (B) the use of the system prior to an offer
25 of employment; or

1 (C) the exclusion of certain individuals
2 from consideration for employment as a result
3 of a perceived likelihood that additional
4 verification will be required, beyond what is re-
5 quired for most job applicants.

6 **SEC. 316. EXTENSION OF TIME.**

7 If a person or entity in good faith attempts to make
8 an inquiry during the time period specified and the
9 verification system established under section 314 has reg-
10 istered that not all inquiries were received during such
11 time, the person or entity may make an inquiry on the
12 first subsequent working day in which the verification sys-
13 tem registers that it has received all inquiries. If the
14 verification system cannot receive inquiries at all times
15 during a day, the person or entity merely has to assert
16 that the entity attempted to make the inquiry on that day
17 for the previous sentence to apply to such an inquiry, and
18 does not have to provide any additional proof concerning
19 such inquiry.

20 **SEC. 317. RETENTION OF PROOF OF VERIFICATION COM-**
21 **PLETION.**

22 After completion of the verification process estab-
23 lished under section 314, a person or entity shall retain
24 a paper, microfiche, microfilm, or electronic version of the
25 form received through the verification process (or, in the

1 case of a telephonic verification, a paper, microfiche,
2 microfilm, or electronic record of the telephonic
3 verification code number) and make it available for inspec-
4 tion by officers of the Department of Homeland Security,
5 the Special Counsel for Immigration-Related Unfair Em-
6 ployment Practices, or the Department of Labor for 3
7 years after the date on which the form or telephonic
8 verification code number was received.

9 **SEC. 318. TERMINATION OF EMPLOYMENT.**

10 (a) BURDEN ON INDIVIDUAL TO RESOLVE ER-
11 RORS.—If a person or entity has received an initial
12 nonverification regarding an individual from the
13 verification system established under section 315, the per-
14 son or entity shall notify the individual in writing within
15 1 business day of such receipt. In such notice, the person
16 or entity shall advise the individual that the burden is on
17 the individual to resolve any error in the verification mech-
18 anism not later than 30 days after the date on which the
19 notice is issued. Such notice shall also state that the per-
20 son or entity shall be required to verify once again the
21 individual's employment authorization and identity
22 through the verification system established under section
23 315, and to terminate any employment in the United
24 States, and any recruitment, hiring, or referral for em-

1 ployment in the United States, of the individual, if a final
2 nonverification is received.

3 (b) **ADDITIONAL VERIFICATION.**—A person or entity
4 that has issued a notice under subsection (a) shall, within
5 33 business days of such issuance, verify once again the
6 individual's employment authorization and identity
7 through the verification system established under section
8 314. Sections 316 and 317 shall apply to such final
9 verification in the same manner as such sections applied
10 to the initial verification.

11 **SEC. 319. FINAL VERIFICATION.**

12 (a) Within 7 days of receiving final nonverification
13 for an individual, the person or entity issued a notice
14 under section 312(a) of this Act shall provide the Commis-
15 sioner of Social Security with a copy of such individual's
16 verification form as described in section 274A(b)(3) of the
17 Immigration and Nationality Act (8 U.S.C. 1324a(b)(3))
18 in addition to any other information regarding the last
19 known name, address, and location of such individual.

20 (b) Within 3 business days of receiving such notifica-
21 tion, the Commissioner of Social Security shall provide
22 such information to the Secretary of Homeland Security.

1 **SEC. 320. EMPLOYER VIOLATIONS.**

2 A person or entity shall be considered to have violated
3 section 274A(a)(1)(A) of the Immigration and Nationality
4 Act (8 U.S.C. 1324a(a)(1)(A)) if the person or entity—

5 (1) continues to employ in the United States, or
6 recruits, hires, or refers for employment in the
7 United States, an individual after receiving a final
8 nonverification regarding an individual from the
9 verification system established under section 314; or
10 (2) otherwise fails to take an action required
11 under this subtitle.

12 **SEC. 321. LIMITATION ON USE.**

13 (a) IN GENERAL.—Notwithstanding any other provi-
14 sion of law, nothing in this subtitle shall be construed to
15 permit or allow any department, bureau, or other agency
16 of the United States Government to utilize any informa-
17 tion, data base, or other records assembled under this sub-
18 title for any other purpose other than as provided for
19 under this subtitle.

20 (b) NO NATIONAL IDENTIFICATION CARD.—Nothing
21 in this subtitle shall be construed to authorize, directly or
22 indirectly, the issuance or use of national identification
23 cards or the establishment of a national identification
24 card.

1 **SEC. 322. FEDERAL TORT CLAIMS ACT REMEDY.**

2 If an individual alleges that the individual would not
3 have been dismissed from a job but for an error of the
4 verification mechanism, the individual may seek com-
5 pensation only through the mechanism of chapter 171 of
6 title 28, United States Code (popularly known as the Fed-
7 eral Tort Claims Act), and injunctive relief to correct such
8 error. No class action may be brought under this subtitle.

9 **SEC. 323. PROTECTION FROM LIABILITY FOR ACTIONS**
10 **TAKEN ON THE BASIS OF INFORMATION.**

11 No person or entity shall be civilly or criminally liable
12 for any action taken in good faith reliance on information
13 provided through the employment eligibility verification
14 mechanism established under this subtitle.

15 **Subtitle C—New IDEA (Illegal**
16 **Deduction Elimination Act)**

17 **SEC. 331. SHORT TITLE.**

18 This subtitle may be cited as the “New IDEA (Illegal
19 Deduction Elimination Act)”.

20 **SEC. 332. CLARIFICATION THAT WAGES PAID TO UNAU-**
21 **THORIZED ALIENS MAY NOT BE DEDUCTED**
22 **FROM GROSS INCOME.**

23 (a) IN GENERAL.—Subsection (c) of section 162 of
24 the Internal Revenue Code of 1986 (relating to illegal
25 bribes, kickbacks, and other payments) is amended by
26 adding at the end the following new paragraph:

1 “(4) WAGES PAID TO OR ON BEHALF OF UNAU-
2 THORIZED ALIENS.—

3 “(A) IN GENERAL.—No deduction shall be
4 allowed under subsection (a) for any wage paid
5 to or on behalf of an unauthorized alien, as de-
6 fined under section 274A(h)(3) of the Immigra-
7 tion and Nationality Act (8 U.S.C.
8 1324a(h)(3)).

9 “(B) WAGES.—For the purposes of this
10 paragraph, the term ‘wages’ means all remu-
11 nation for employment, including the cash
12 value of all remuneration (including benefits)
13 paid in any medium other than cash.

14 “(C) SAFE HARBOR.—If a person or other
15 entity is participating in the basic pilot program
16 described in section 403 of the Illegal Immigra-
17 tion Reform and Immigrant Responsibility Act
18 of 1996 (8 U.S.C. 1324a note) and obtains con-
19 firmation of identity and employment eligibility
20 in compliance with the terms and conditions of
21 the program with respect to the hiring (or re-
22 cruitment or referral) of an employee, subpara-
23 graph (A) shall not apply with respect to wages
24 paid to such employee.”.

1 (b) 6-YEAR LIMITATION ON ASSESSMENT AND COL-
2 LECTION.—Subsection (c) of section 6501 of such Code
3 (relating to exceptions) is amended by adding at the end
4 the following new paragraph:

5 “(10) DEDUCTION CLAIMED FOR WAGES PAID
6 TO UNAUTHORIZED ALIENS.—In the case of a return
7 of tax on which a deduction is shown in violation of
8 section 162(c)(4), any tax under chapter 1 may be
9 assessed, or a proceeding in court for the collection
10 of such tax may be begun without assessment, at
11 any time within 6 years after the return was filed.”.

12 (c) USE OF DOCUMENTATION FOR ENFORCEMENT
13 PURPOSES.—Section 274A of the Illegal Immigration Re-
14 form and Immigrant Responsibility Act of 1996 is amend-
15 ed—

16 (1) in subparagraph (b)(5), by inserting “, sec-
17 tion 162(c)(4) of the Internal Revenue Code of
18 1986,” after “enforcement of this chapter”;

19 (2) in subparagraph (d)(2)(F), by inserting “,
20 section 162(c)(4) of the Internal Revenue Code of
21 1986,” after “enforcement of this chapter”; and

22 (3) in subparagraph (d)(2)(G), by inserting
23 “section 162(c)(4) of the Internal Revenue Code of
24 1986 or” after “or enforcement of”.

1 (d) AVAILABILITY OF INFORMATION.—The Commis-
2 sioner of Social Security shall make available to the Com-
3 missioner of Internal Revenue any information related to
4 the investigation and enforcement of section 162(c)(4) of
5 the Internal Revenue Code of 1986, including any no-
6 match letter and any information in the suspense earnings
7 file.

8 (e) EFFECTIVE DATE.—

9 (1) Except as provided in paragraph (2), this
10 Act and the amendments made by this Act shall
11 take effect on the date of the enactment of this Act.

12 (2) The amendments made by subsections (a)
13 and (b) shall apply to taxable years beginning after
14 December 31, 2007.

15 **Subtitle D—Improved Security for** 16 **Birth Certificates**

17 **SEC. 341. DEFINITIONS.**

18 (a) APPLICABILITY OF DEFINITIONS.—Except as
19 otherwise specifically provided, the definitions contained in
20 section 201 of the REAL ID Act of 2005 (division B of
21 Public Law 109–13) apply to this subtitle.

22 (b) OTHER DEFINITIONS.—In this subtitle, the fol-
23 lowing definitions apply:

24 (1) BIRTH CERTIFICATE.—The term “birth cer-
25 tificate” means a certificate of birth—

1 (A) for an individual (regardless of where
2 born)—

3 (i) who is a citizen or national of the
4 United States at birth; and

5 (ii) whose birth is registered in the
6 United States; and

7 (B) that—

8 (i) is issued by a Federal, State, or
9 local government agency or authorized cus-
10 todian of record and produced from birth
11 records maintained by such agency or cus-
12 todian of record; or

13 (ii) is an authenticated copy, issued
14 by a Federal, State, or local government
15 agency or authorized custodian of record,
16 of an original certificate of birth issued by
17 such agency or custodian of record.

18 (2) FULL LEGAL NAME.—The term “full legal
19 name” means the complete name of the person, in-
20 cluding the birth name as recorded in the state and
21 or nation of birth, as applicable, and any suffixes or
22 names appended through lawful action through mar-
23 riage, adoption or lawful name change.

1 (3) REGISTRANT.—The term “registrant”
2 means, with respect to a birth certificate, the person
3 whose birth is registered on the certificate.

4 (4) STATE.—The term “State” has the the
5 meaning given such term in section 201 of the
6 REAL ID Act of 2005 (division B of Public Law
7 109–13), except that New York City shall be treated
8 as a State separate from New York.

9 **SEC. 342. APPLICABILITY OF MINIMUM STANDARDS TO**
10 **LOCAL GOVERNMENTS.**

11 The minimum standards in this subtitle applicable to
12 birth certificates issued by a State shall also apply to birth
13 certificates issued by a local government in the State. It
14 shall be the responsibility of the State to ensure that local
15 governments in the State comply with the minimum stand-
16 ards.

17 **SEC. 343. MINIMUM STANDARDS FOR FEDERAL RECOGNITION.**
18

19 (a) MINIMUM STANDARDS FOR FEDERAL USE.—

20 (1) IN GENERAL.—Beginning 3 years after the
21 date of the enactment of this Act, a Federal agency
22 may not accept, for any official purpose, a birth cer-
23 tificate issued by a State to any person unless the
24 State is meeting the requirements of this section.

1 (2) STATE CERTIFICATIONS.—The Secretary
2 shall determine whether a State is meeting the re-
3 quirements of this section based on certifications
4 made by the State to the Secretary. Such certifi-
5 cations shall be made at such times and in such
6 manner as the Secretary, in consultation with the
7 Secretary of Health and Human Services, may pre-
8 scribe by regulation.

9 (b) MINIMUM DOCUMENT STANDARDS.—To meet the
10 requirements of this section, a State shall include, on each
11 birth certificate issued to a person by the State, the use
12 of safety paper, the seal of the issuing custodian of record,
13 and such other features as the Secretary may determine
14 necessary to prevent tampering, counterfeiting, and other-
15 wise duplicating the birth certificate for fraudulent pur-
16 poses. The Secretary may not require a single design to
17 which birth certificates issued by all States must conform.
18 However, the Secretary shall require a minimum standard
19 set of security features incorporated into birth certificates
20 issued by all States, such as digital watermarks, so that
21 validation of such security features can be affordably made
22 be law enforcement officials, by motor vehicle administra-
23 tors, and State and Federal officials.

24 (c) MINIMUM ISSUANCE STANDARDS.—

1 (1) IN GENERAL.—To meet the requirements of
2 this section, a State shall require and verify the fol-
3 lowing information from the requestor before issuing
4 an authenticated copy of a birth certificate:

5 (A) The name on the birth certificate.

6 (B) The date and location of the birth.

7 (C) The mother's maiden name.

8 (D) Substantial proof of the requestor's
9 identity.

10 (E) Where available, authentication of
11 identity through comparison with a biometric
12 identifier.

13 (2) ISSUANCE TO PERSONS NOT NAMED ON
14 BIRTH CERTIFICATE.—To meet the requirements of
15 this section, in the case of a request by a person who
16 is not named on the birth certificate, a State must
17 require the presentation of legal authorization to re-
18 quest the birth certificate before issuance.

19 (3) ISSUANCE TO FAMILY MEMBERS.—Not later
20 than one year after the date of the enactment of this
21 Act, the Secretary, in consultation with the Sec-
22 retary of Health and Human Services and the
23 States, shall establish minimum standards for
24 issuance of a birth certificate to specific family
25 members, their authorized representatives, and oth-

1 ers who demonstrate that the certificate is needed
2 for the protection of the requestor's personal or
3 property rights.

4 (4) WAIVERS.—A State may waive the require-
5 ments set forth in subparagraphs (A) through (C) of
6 subsection (c)(1) in exceptional circumstances, such
7 as the incapacitation of the registrant.

8 (5) APPLICATIONS BY ELECTRONIC MEANS.—
9 To meet the requirements of this section, for appli-
10 cations by electronic means, through the mail or by
11 phone or fax, a State shall employ third party
12 verification, or equivalent verification, of the identity
13 of the requestor.

14 (6) VERIFICATION OF DOCUMENTS.—To meet
15 the requirements of this section, a State shall verify
16 the documents used to provide proof of identity of
17 the requestor.

18 (d) OTHER REQUIREMENTS.—To meet the require-
19 ments of this section, a State shall adopt, at a minimum,
20 the following practices in the issuance and administration
21 of birth certificates:

22 (1) Establish and implement minimum building
23 security standards for State and local vital record
24 offices.

1 (2) Restrict public access to birth certificates
2 and information gathered in the issuance process to
3 ensure that access is restricted to entities with which
4 the State has a binding privacy protection agree-
5 ment.

6 (3) Subject all persons with access to vital
7 records to appropriate security clearance require-
8 ments.

9 (4) Establish fraudulent document recognition
10 training programs for appropriate employees en-
11 gaged in the issuance process.

12 (5) Establish and implement internal operating
13 system standards for paper and for electronic sys-
14 tems.

15 (6) Establish a central electronic database
16 that—

17 (A) is maintained in a physically secure en-
18 vironment so that unauthorized access can be
19 prevented;

20 (B) is linked through the Electronic
21 Verification of Vital Event System (EVVES)
22 established under section 345 or an equivalent
23 system to provide interoperative data exchange
24 with other States and with Federal agencies,
25 subject to privacy restrictions and confirmation

1 of the authority and identity of the requestor;
2 and

3 (C) incorporates within its records, to en-
4 sure process integrity, the full legal name of
5 any authorized requestor, the date of the re-
6 quest, and the relationship to the person whose
7 birth is recorded on the birth certificate.

8 (7) Ensure that birth and death records are
9 matched in a comprehensive and timely manner, and
10 that all electronic birth records and paper birth cer-
11 tificates of decedents are marked “deceased”.

12 (8) Cooperate with the Secretary in the imple-
13 mentation of electronic verification of vital events
14 under section 345.

15 **SEC. 344. ESTABLISHMENT OF ELECTRONIC BIRTH AND**
16 **DEATH REGISTRATION SYSTEMS.**

17 In consultation with the Secretary of Health and
18 Human Services and the Commissioner of Social Security,
19 the Secretary shall take the following actions:

20 (1) Work with the States to establish a common
21 data set and common data exchange protocol for
22 electronic birth registration systems and death reg-
23 istration systems.

24 (2) Coordinate requirements for such systems
25 to align with a national model.

1 (3) Ensure that fraud prevention is built into
2 the design of electronic vital registration systems in
3 the collection of vital event data, the issuance of
4 birth certificates, and the exchange of data among
5 government agencies.

6 (4) Ensure that electronic systems for issuing
7 birth certificates, in the form of printed abstracts of
8 birth records or digitized images, employ a common
9 format of the certified copy, so that those requiring
10 such documents can quickly confirm their validity.

11 (5) Establish uniform field requirements for
12 State birth registries.

13 (6) Not later than 1 year after the date of the
14 enactment of this Act, establish a process with the
15 Department of Defense that will result in the shar-
16 ing of data, with the States and the Social Security
17 Administration, regarding deaths of United States
18 military personnel and the birth and death of their
19 dependents.

20 (7) Not later than 1 year after the date of the
21 enactment of this Act, establish a process with the
22 Department of State to improve registration, notifi-
23 cation, and the sharing of data with the States and
24 the Social Security Administration, regarding births
25 and deaths of United States citizens abroad.

1 (8) Not later than 3 years after the date of es-
2 tablishment of databases provided for under this sec-
3 tion, require States to record and retain electronic
4 records of pertinent identification information col-
5 lected from requestors who are not the registrants.

6 (9) Not later than 6 months after the date of
7 the enactment of this Act, submit to Congress, a re-
8 port on whether there is a need for Federal laws to
9 address penalties for fraud and misuse of vital
10 records and whether violations are sufficiently en-
11 forced.

12 **SEC. 345. ELECTRONIC VERIFICATION OF VITAL EVENTS.**

13 (a) LEAD AGENCY.—The Secretary shall lead the im-
14 plementation of the Electronic Verification of Vital Events
15 System for the purpose of verifying a person's birth and
16 death.

17 (b) REGULATIONS.—In carrying out subsection (a),
18 the Secretary shall issue regulations to establish a means
19 by which authorized Federal and State agency users with
20 a single interface will be able to generate an electronic
21 query to any participating vital records jurisdiction
22 throughout the Nation to verify the contents of a paper
23 birth certificate. Pursuant to the regulations, an electronic
24 response from the participating vital records jurisdiction
25 as to whether there is a birth record in their database that

1 matches the paper birth certificate will be returned to the
2 user, along with an indication if the matching birth record
3 has been flagged “deceased”. The regulations shall take
4 effect not later than 5 years after the date of the enact-
5 ment of this Act.

6 **SEC. 346. GRANTS TO STATES.**

7 (a) IN GENERAL.—The Secretary is authorized to
8 award grants to States to modernize State birth and death
9 certificate records and otherwise to satisfy the require-
10 ments of this subtitle. On an expedited basis, the Sec-
11 retary shall award grants or contracts for the purpose of
12 improving the accuracy and electronic availability of
13 States’ records of births, deaths, and of other records nec-
14 essary for implementation of the Electronic Verification
15 of Vital Events System established in section 345, and as
16 otherwise necessary to advance the purposes of this sub-
17 title.

18 (b) REGULATION COMPLIANCE.—A State that does
19 fails to certify the State’s intent to comply with the regula-
20 tions issued to implement this subtitle not later than De-
21 cember 31, 2013, or that does not submit a compliance
22 plan acceptable to the Secretary is not eligible for a grant
23 under subsection (a).

24 (c) DURATION.—Grants may be awarded under this
25 section during fiscal years 2008 through 2012.

1 (d) ELIGIBLE RECIPIENTS.—If the Secretary of
2 Homeland Security determines that compliance with this
3 subtitle can best be achieved by awarding grants or con-
4 tracts to a State, a group of States, a government agency,
5 a chartered nonprofit organization, or a private entity, the
6 Secretary may utilize funds under this section to award
7 such grants or contracts.

8 (e) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated to the Secretary for
10 each of the fiscal years 2008 through 2012 such sums as
11 may be necessary to carry out this chapter.

12 **SEC. 347. AUTHORITY.**

13 (a) PARTICIPATION WITH FEDERAL AGENCIES AND
14 STATES.—All authority to issue regulations, certify stand-
15 ards, and issue grants under this chapter shall be carried
16 out by the Secretary, with the concurrence of the Sec-
17 retary of Health and Human Services and in consultation
18 with State vital statistics offices and appropriate Federal
19 agencies.

20 (b) EXTENSIONS OF DEADLINES.—The Secretary
21 may grant to a State an extension of time to meet the
22 requirements of section 329(a)(1) if the State provides
23 adequate justification for noncompliance.

24 **SEC. 348. REPEAL.**

25 Section 7211 of Public Law 108–458 is repealed.

1 **Subtitle E—Stop the Misuse of**
2 **ITINs Act of 2007**

3 **SEC. 351. SHORT TITLE.**

4 This subtitle may be cited as the “Stop the Misuse
5 of ITINs Act of 2007”.

6 **SEC. 352. NOTIFICATION OF EMPLOYMENT STATUS OF INDIVIDUALS NOT AUTHORIZED TO WORK IN THE UNITED STATES.**

9 (a) IN GENERAL.—Subsection (i) of section 6103 of
10 the Internal Revenue Code of 1986 (relating to confiden-
11 tiality and disclosure of returns and return information)
12 is amended by adding at the end the following new para-
13 graph:

14 “(9) DISCLOSURE TO SECRETARY OF HOME-
15 LAND SECURITY OF EMPLOYMENT INFORMATION OF
16 EMPLOYEES NOT AUTHORIZED TO BE EMPLOYED IN
17 UNITED STATES.—

18 “(A) IN GENERAL.—If—

19 “(i) the Secretary receives a return
20 from any person or entity (hereafter in this
21 paragraph referred to as the ‘employer’)
22 showing wages (as defined in section
23 3121(a)) paid to any employee, and

24 “(ii) the TIN of such employee, as
25 shown on such return, indicates that such

1 employee is not authorized to be employed
2 in the United States,
3 the Secretary shall provide electronically to the
4 Secretary of Homeland Security the following
5 information as shown on such return: the name,
6 address, and TIN of such employee and the
7 name, address, and employer identification
8 number of the employer.

9 “(B) NOTICE TO EMPLOYER AND EM-
10 PLOYEE.—Whenever the Secretary sends a no-
11 tice under subparagraph (A) with respect to
12 any employer and employee, the Secretary also
13 shall notify the employer and the employee in
14 writing that such employee is not authorized to
15 be employed in the United States and that the
16 employee’s employment with the employer
17 should be terminated not later than the 30th
18 day after the date of the notice. Such notice
19 shall also describe—

20 “(i) the employer’s obligations under
21 this paragraph,

22 “(ii) the employee’s right under this
23 paragraph to contest the determination
24 that the employee is not authorized to be
25 employed in the United States, and

1 “(iii) the procedure under this para-
2 graph for contesting such determination.

3 “(C) EMPLOYEE’S RIGHT TO CONTEST.—

4 “(i) NOTICE TO EMPLOYEE.—If any
5 employer receives such a notice from the
6 Secretary with respect to an employee, the
7 employer shall, within 3 business days
8 after the date the employer received such
9 notice, provide a copy of such notice to the
10 employee.

11 “(ii) RIGHT TO CONTEST.—An em-
12 ployee may contest the accuracy of such
13 notice during the 30-day period beginning
14 on the date that the employer provided the
15 notice under clause (i) to the employee.

16 “(iii) CONTEST PROCEDURE.—If, dur-
17 ing such 30-day period, the employee pro-
18 vides the employer with information sub-
19 stantiating such employee’s claimed au-
20 thorization to be employed in the United
21 States, the employer shall, in such form
22 and manner as the Secretary shall pre-
23 scribe, provide to the Secretary—

1 “(I) the employee’s name, ad-
2 dress, and taxpayer identification
3 number,

4 “(II) the employer’s name, ad-
5 dress, telephone number, and em-
6 ployer identification number, and

7 “(III) the information provided
8 by the employee to the employer sub-
9 stantiating such employee’s authoriza-
10 tion to be employed in the United
11 States.

12 “(D) VERIFICATION FROM DEPARTMENT
13 OF HOMELAND SECURITY.—

14 “(i) TRANSMITTAL OF INQUIRY.—
15 Within 3 business days after receiving the
16 information described in subparagraph
17 (C)(iii), the Secretary shall provide such
18 information electronically to the Secretary
19 of Homeland Security.

20 “(ii) RESPONSE.—Within 7 business
21 days after receiving such information, the
22 Secretary of Homeland Security shall elec-
23 tronically notify the Secretary, and shall
24 notify the employer and employee in writ-

1 ing, as to whether the employee is author-
2 ized to be employed in the United States.

3 “(E) SUSPENSION OF OBLIGATION TO TER-
4 MINATE EMPLOYMENT UNTIL RESPONSE RE-
5 CEIVED.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clause (ii), if the employee meets
8 the requirement of subparagraph (C)(iii),
9 the employer’s obligation to terminate the
10 employment of such employee shall be sus-
11 pended until the employer receives the no-
12 tice described in subparagraph (D)(ii).

13 “(ii) TIMELY RESPONSE NOT RE-
14 CEIVED.—If the employer does not receive
15 such notice before the 30th day after the
16 close such 30-day period, the employer
17 shall so notify the Secretary.

18 “(F) REBUTTABLE PRESUMPTION OF VIO-
19 LATION OF THE IMMIGRATION AND NATION-
20 ALITY ACT.—

21 “(i) IN GENERAL.—A rebuttable pre-
22 sumption is created that the employer has
23 violated section 274A(a)(1)(A) of the Im-
24 migration and Nationality Act if—

1 “(I) the employer employs an in-
2 dividual with respect to whom a notice
3 is received under subparagraph (B)
4 after the 30 days described in such
5 subparagraph,

6 “(II) the employer fails to notify
7 the Secretary as required by subpara-
8 graph (E)(ii) and employs such indi-
9 vidual, or

10 “(III) the employer refers the in-
11 dividual for employment after receiv-
12 ing a notice under subparagraph (B)
13 with respect to such individual.

14 “(ii) EXCEPTIONS.—

15 “(I) SUSPENSION PERIOD.—
16 Clause (i)(I) shall not apply during
17 the suspension period described in
18 subparagraph (E)(i)

19 “(II) NOTICE FROM SECRETARY
20 OF HOMELAND SECURITY.—Clause (i)
21 shall cease to apply with respect to an
22 individual after the date that the em-
23 ployer is notified by the Secretary of
24 Homeland Security that such indi-

1 vidual is authorized to be employed in
2 the United States.

3 “(G) REFUNDS DENIED.—No refund of
4 any tax imposed by this shall be made to any
5 individual for any taxable year during any por-
6 tion of which such individual is employed in the
7 United States without being authorized to be so
8 employed.

9 “(H) SPECIAL RULES.—

10 “(i) PROTECTION FROM LIABILITY.—
11 No employer shall be civilly or criminally
12 liable under any law for any action taken
13 in good faith reliance on information pro-
14 vided by the Secretary or the Secretary of
15 Homeland Security with respect to any in-
16 dividual’s eligibility to be employed in the
17 United States.

18 “(ii) TIMELY MAILING TREATED AS
19 TIMELY NOTICE.—Rules similar to the
20 rules of section 7502 shall apply for pur-
21 poses of this section.

22 “(iii) LAST KNOWN ADDRESS OF EM-
23 PLOYEE.—Any notice required to be pro-
24 vided to an employee under this section
25 shall be sufficient if mailed to the employee

1 at the last known address of the em-
2 ployee.”.

3 (b) CONFORMING AMENDMENT.—Paragraph (4) of
4 section 6103(p) of such Code is amended by striking “(5)
5 or (7)” each place it appears and inserting “(5), (7), or
6 (9)”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to returns received more than 180
9 days after the date of the enactment of this Act.

10 **Subtitle F—Miscellaneous**

11 **SEC. 361. SHARING OF SOCIAL SECURITY DATA FOR IMMI- 12 GRATION ENFORCEMENT PURPOSES.**

13 (a) SOCIAL SECURITY ACCOUNT NUMBERS.—Section
14 264(f) of the Immigration and Nationality Act (8 U.S.C.
15 1304(f)) is amended to read as follows:

16 “(f) Notwithstanding any other provision of law (in-
17 cluding section 6103 of the Internal Revenue Code of
18 1986), the Secretary of Homeland Security, the Secretary
19 of Labor, and the Attorney General are authorized to re-
20 quire an individual to provide the individual’s social secu-
21 rity account number for purposes of inclusion in any
22 record of the individual maintained by either such Sec-
23 retary or the Attorney General, or of inclusion in any ap-
24 plication, document, or form provided under or required
25 by the immigration laws.”.

1 (b) EXCHANGE OF INFORMATION.—Section 290(c) of
2 the Immigration and Nationality Act (8 U.S.C. 1360(c))
3 is amended by striking paragraph (2) and inserting the
4 following new paragraphs:

5 “(2)(A) Notwithstanding any other provision of
6 law (including section 6103 of the Internal Revenue
7 Code of 1986), if earnings are reported on or after
8 January 1, 1997, to the Social Security Administra-
9 tion on a social security account number issued to
10 an alien not authorized to work in the United
11 States, the Commissioner of Social Security shall
12 provide the Secretary of Homeland Security with in-
13 formation regarding the name, date of birth, and ad-
14 dress of the alien, the name and address of the per-
15 son reporting the earnings, and the amount of the
16 earnings.

17 “(B) The information described in subpara-
18 graph (A) shall be provided in an electronic form
19 agreed upon by the Commissioner and the Secretary.

20 “(3)(A) Notwithstanding any other provision of
21 law (including section 6103 of the Internal Revenue
22 Code of 1986), if a social security account number
23 was used with multiple names, the Commissioner of
24 Social Security shall provide the Secretary of Home-
25 land Security with information regarding the name,

1 date of birth, and address of each individual who
2 used that social security account number, and the
3 name and address of the person reporting the earn-
4 ings for each individual who used that social security
5 account number.

6 “(B) The information described in subpara-
7 graph (A) shall be provided in an electronic form
8 agreed upon by the Commissioner and the Secretary
9 for the sole purpose of enforcing the immigration
10 laws.

11 “(C) The Secretary, in consultation with the
12 Commissioner, may limit or modify the requirements
13 of this paragraph, as appropriate, to identify the
14 cases posing the highest possibility of fraudulent use
15 of social security account numbers related to viola-
16 tion of the immigration laws.

17 “(4)(A) Notwithstanding any other provision of
18 law (including section 6103 of the Internal Revenue
19 Code of 1986), if more than one person reports
20 earnings for an individual during a single tax year,
21 the Commissioner of Social Security shall provide
22 the Secretary of Homeland Security information re-
23 garding the name, date of birth, and address of the
24 individual, and the name and address of the each
25 person reporting earnings for that individual.

1 “(B) The information described in subpara-
2 graph (A) shall be provided in an electronic form
3 agreed upon by the Commissioner and the Secretary
4 for the sole purpose of enforcing the immigration
5 laws.

6 “(C) The Secretary, in consultation with the
7 Commissioner, may limit or modify the requirements
8 of this paragraph, as appropriate, to identify the
9 cases posing the highest possibility of fraudulent use
10 of social security account numbers related to viola-
11 tion of the immigration laws.

12 “(5)(A) The Commissioner of Social Security
13 shall perform, at the request of the Secretary of
14 Homeland Security, a search or manipulation of
15 records held by the Commissioner if the Secretary
16 certifies that the purpose of the search or manipula-
17 tion is to obtain information that is likely to assist
18 in identifying individuals (and their employers) who
19 are using false names or social security account
20 numbers, who are sharing a single valid name and
21 social security account number among multiple indi-
22 viduals, who are using the social security account
23 number of a person who is deceased, too young to
24 work, or not authorized to work, or who are other-
25 wise engaged in a violation of the immigration laws.

1 The Commissioner shall provide the results of such
2 search or manipulation to the Secretary, notwith-
3 standing any other provision law (including section
4 6103 of the Internal Revenue Code of 1986).

5 “(B) The Secretary shall transfer to the Com-
6 missioner the funds necessary to cover the costs di-
7 rectly incurred by the Commissioner in carrying out
8 each search or manipulation requested by the Sec-
9 retary under subparagraph (A).”.

10 (c) FALSE CLAIMS OF CITIZENSHIP BY NATIONALS
11 OF THE UNITED STATES.—Section 212(a)(6)(C)(ii)(I) of
12 the Immigration and Nationality Act (8 U.S.C.
13 1182(a)(6)(C)(ii)(I)) is amended by inserting “or na-
14 tional” after “citizen”.

15 **SEC. 362. ADDITIONAL WORKSITE ENFORCEMENT AND**
16 **FRAUD DETECTION AGENTS.**

17 (a) WORKSITE ENFORCEMENT.—The Secretary of
18 Homeland Security shall, subject to the availability of ap-
19 propriations for such purpose, annually increase, by not
20 fewer than 2,000, the number of positions dedicated to
21 enforcing compliance with sections 274 and 274A of the
22 Immigration and Nationality Act (8 U.S.C. 1324 and
23 1324a) during the five year period beginning on October
24 1, 2008.

1 (b) FRAUD DETECTION.—The Secretary of Home-
2 land Security shall, subject to the availability of appropria-
3 tions for such purpose, increase by not fewer than 1,000
4 the number of positions for Immigration Enforcement
5 Agents dedicated to immigration fraud detection during
6 the five year period beginning on October 1, 2008.

7 (c) AUTHORIZATION OF APPROPRIATIONS.—There
8 are authorized to be appropriated to the Secretary of
9 Homeland Security for each of fiscal years 2008 through
10 2012 such sums as may be necessary to carry out this
11 section.

12 **TITLE IV—TEMPORARY AGRI-**
13 **CULTURAL WORKER PRO-**
14 **GRAM**

15 **SEC. 401. ADMISSION OF TEMPORARY H-2A WORKERS.**

16 (a) PROCEDURE FOR ADMISSION.—Section 218 of
17 the Immigration and Nationality Act (8 U.S.C. 1188) is
18 amended to read as follows:

19 “ADMISSION OF TEMPORARY H-2A WORKERS

20 “SEC. 218. (a) DEFINITIONS.—In this section:

21 “(1) AREA OF EMPLOYMENT.—The term ‘area
22 of employment’ means the area within normal com-
23 muting distance of the worksite or physical location
24 where the work of the H-2A worker is or will be
25 performed. If such work site or location is within a
26 Metropolitan Statistical Area, any place within such

1 area shall be considered to be within the area of em-
2 ployment.

3 “(2) DISPLACE.—The term ‘displace’ means to
4 lay off a worker from a job that is essentially equiv-
5 alent to the job for which an H-2A worker is
6 sought. A job shall not be considered to be ‘essen-
7 tially equivalent’ to another job unless the job—

8 “(A) involves essentially the same respon-
9 sibilities as such other job;

10 “(B) was held by a United States worker
11 with substantially equivalent qualifications and
12 experience; and

13 “(C) is located in the same area of employ-
14 ment as the other job.

15 “(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible
16 individual’ means an individual who is not an unau-
17 thorized alien (as defined in section 274A(h)(3))
18 with respect to the employment of the individual.

19 “(4) EMPLOYER.—The term ‘employer’ means
20 an employer who hires workers to perform agricul-
21 tural employment.

22 “(5) H-2A WORKER.—The term ‘H-2A worker’
23 means a nonimmigrant described in section
24 101(a)(15)(H)(ii)(a).

25 “(6) LAY OFF.—

1 “(A) IN GENERAL.—The term ‘lay off’—

2 “(i) means to cause a worker’s loss of
3 employment, other than through a dis-
4 charge for inadequate performance, viola-
5 tion of workplace rules, cause, voluntary
6 departure, voluntary retirement, or the ex-
7 piration of a grant or contract (other than
8 a temporary employment contract entered
9 into in order to evade a condition described
10 in paragraph (3) or (7) of subsection (b);
11 and

12 “(ii) does not include any situation in
13 which the worker is offered, as an alter-
14 native to such loss of employment, a simi-
15 lar employment opportunity with the same
16 employer (or, in the case of a placement of
17 a worker with another employer under sub-
18 section (h)(2), with either employer de-
19 scribed in such subsection) at equivalent or
20 higher compensation and benefits than the
21 position from which the employee was dis-
22 charged, regardless of whether or not the
23 employee accepts the offer.

24 “(B) CONSTRUCTION.—Nothing in this
25 paragraph is intended to limit an employee’s

1 rights under a collective bargaining agreement
2 or other employment contract.

3 “(7) PREVAILING WAGE.—The term ‘prevailing
4 wage’ means the wage rate that includes the 51st
5 percentile of employees with similar experience and
6 qualifications in the agricultural occupation in the
7 area of intended employment, calculated using the
8 same methodology used by the Department of Labor
9 to determine prevailing wage for the purpose of the
10 program described in section 101(a)(15)(H)(ii)(b)
11 during 2007, and expressed in terms of the pre-
12 vailing method of pay for the occupation in the area
13 of intended employment.

14 “(8) UNITED STATES WORKER.—The term
15 ‘United States worker’ means any worker who is—

16 “(A) a national of the United States; or

17 “(B) a person admitted for permanent
18 resident status under section 245 of the Immi-
19 gration and Nationality Act (8 U.S.C. 1255).

20 “(b) PETITION.—An alien may not be admitted as
21 an H-2A worker unless an employer has filed with the
22 Secretary of Homeland Security a petition attesting to the
23 following:

24 “(1) TEMPORARY WORK OR SERVICES.—

1 “(A) IN GENERAL.—The employer is seek-
2 ing to employ a specific number of agricultural
3 workers on a temporary basis and will provide
4 compensation to such workers at a specified
5 wage rate and under specified conditions.

6 “(B) DEFINITION.—For purposes of this
7 paragraph, a worker is employed on a tem-
8 porary basis if the employer intends to employ
9 the worker for no longer than 10 months dur-
10 ing any contract period.

11 “(2) BENEFITS, WAGES, AND WORKING CONDI-
12 TIONS.—The employer will provide, at a minimum,
13 the benefits, wages, and working conditions required
14 by subsection (j) to all workers employed in the jobs
15 for which the H-2A worker is sought and to all
16 other temporary workers in the same occupation at
17 the place of employment.

18 “(3) NONDISPLACEMENT OF UNITED STATES
19 WORKERS.—The employer did not displace and will
20 not displace a United States worker employed by the
21 employer during the period of employment of the H-
22 2A worker and during the 30-day period imme-
23 diately preceding such period of employment in the
24 occupation at the place of employment for which the
25 employer seeks approval to employ H-2A workers.

1 “(4) RECRUITMENT.—

2 “(A) IN GENERAL.—The employer—

3 “(i) conducted adequate recruitment
4 in the area of intended employment before
5 filing the attestation; and

6 “(ii) was unsuccessful in locating a
7 qualified United States worker for the job
8 opportunity for which the H-2A worker is
9 sought.

10 “(B) OTHER REQUIREMENTS.—The re-
11 cruitment requirement under subparagraph (A)
12 is satisfied if the employer places—

13 “(i) a local job order with the State
14 workforce agency serving the local area
15 where the work will be performed, except
16 that nothing in this clause shall require the
17 employer to file an interstate job order
18 under section 653 of title 20, Code of Fed-
19 eral Regulations; and

20 “(ii) a Sunday advertisement in a
21 newspaper of general circulation in the
22 area of intended employment.

23 “(C) ADVERTISEMENT REQUIREMENT.—
24 The advertisement requirement under subpara-
25 graph (B)(ii) is satisfied if the advertisement—

1 “(i) names the employer;

2 “(ii) directs applicants to contact the
3 employer;

4 “(iii) provides a description of the va-
5 cancy that is specific enough to apprise
6 United States workers of the job oppor-
7 tunity for which certification is sought;

8 “(iv) describes the geographic area
9 with enough specificity to apprise appli-
10 cants of any travel requirements and where
11 applicants will likely have to reside to per-
12 form the job; and

13 “(v) states the rate of pay, which
14 shall not be less than the wage paid for the
15 occupation in the area of intended employ-
16 ment.

17 “(D) END OF RECRUITMENT REQUIRE-
18 MENT.—The requirement to recruit United
19 States workers shall terminate on the first day
20 of the contract period that work begins.

21 “(5) OFFERS TO UNITED STATES WORKERS.—
22 The employer has offered or will offer the job for
23 which the H-2A worker is sought to any eligible
24 United States worker who—

25 “(A) applies;

1 “(B) is qualified for the job; and

2 “(C) will be available at the time and place
3 of need.

4 “(6) PROVISION OF INSURANCE.—If the job for
5 which the H–2A worker is sought is not covered by
6 State workers’ compensation law, the employer will
7 provide, at no cost to the worker, insurance covering
8 injury and disease arising out of, and in the course
9 of, the worker’s employment, which will provide ben-
10 efits at least equal to those provided under the State
11 workers’ compensation law for comparable employ-
12 ment.

13 “(7) REQUIREMENTS FOR PLACEMENT OF H–2A
14 WORKERS WITH OTHER EMPLOYERS.—A non-
15 immigrant who is admitted into the United States as
16 an H–2A worker may be transferred to another em-
17 ployer that has certified to the Secretary of Home-
18 land Security that it has filed a petition under this
19 subsection and is in compliance with this section.
20 The Secretary of Homeland Security shall establish
21 a process for the approval and reissuance of visas
22 for such transferred H–2A workers as necessary.

23 “(8) STRIKE OR LOCKOUT.—There is not a
24 strike or lockout in the course of a labor dispute
25 which, under regulations promulgated by the Sec-

1 retary of Labor, precludes the hiring of H-2A work-
2 ers.

3 “(9) PREVIOUS VIOLATIONS.—The employer
4 has not, during the previous two-year period, em-
5 ployed H-2A workers and knowingly violated a ma-
6 terial term or condition of approval with respect to
7 the employment of domestic or nonimmigrant work-
8 ers, as determined by the Secretary of Labor after
9 notice and opportunity for a hearing.

10 “(c) PUBLIC EXAMINATION.—Not later than 1 work-
11 ing day after the date on which a petition under this sec-
12 tion is filed, the employer shall make a copy of each such
13 petition available for public examination, at the employer’s
14 principal place of business or worksite.

15 “(d) LIST.—

16 “(1) IN GENERAL.—The Secretary of Homeland
17 Security shall maintain a list of the petitions filed
18 under subsection (b), which shall—

19 “(A) be sorted by employer; and

20 “(B) include the number of H-2A workers
21 sought, the wage rate, the period of intended
22 employment, and the date of need for each
23 alien.

24 “(2) AVAILABILITY.—The Secretary of Home-
25 land Security shall, at least monthly, submit a copy

1 of the list described in paragraph (1) to the Sec-
2 retary of Labor, who shall make the list available for
3 public examination.

4 “(e) PETITIONING FOR ADMISSION.—

5 “(1) IN GENERAL.—An employer, or an asso-
6 ciation acting as an agent or joint employer for its
7 members, that seeks the admission into the United
8 States of an H-2A worker shall file with the Sec-
9 retary of Homeland Security a petition that includes
10 the attestations described in subsection (b).

11 “(2) CONSIDERATION OF PETITIONS.—For each
12 petition filed and considered under this subsection—

13 “(A) the Secretary of Homeland Security
14 may not require such petition to be filed more
15 than 28 days before the first date the employer
16 requires the labor or services of the H-2A
17 worker; and

18 “(B) unless the Secretary of Homeland Se-
19 curity determines that the petition is incomplete
20 or obviously inaccurate, the Secretary, not later
21 than 7 days after the date on which such peti-
22 tion was filed, shall either approve or reject the
23 petition.

24 “(3) EXPEDITED ADJUDICATION.—The Sec-
25 retary of Homeland Security shall—

1 “(A) establish a procedure for expedited
2 adjudication of petitions filed under this sub-
3 section; and

4 “(B) not later than 7 working days after
5 such filing, transmit, by fax, cable, or other
6 means assuring expedited delivery, a copy of no-
7 tice of action on the petition—

8 “(i) in the case of approved petitions,
9 to the petitioner, the Secretary of Labor,
10 and to the appropriate immigration officer
11 at the port of entry or United States con-
12 sulate where the petitioner has indicated
13 that the alien beneficiary or beneficiaries
14 will apply for a visa or admission to the
15 United States; and

16 “(ii) in the case of denied petitions, to
17 the petitioner, including reasons for the de-
18 nial and instructions on how to appeal
19 such denial.

20 “(4) PETITION AGREEMENTS.—By filing an H-
21 2A petition, a petitioner and each employer consents
22 to allow access to the site where the labor is being
23 performed to the Department of Labor, the Depart-
24 ment of Homeland Security, or a State agency for

1 the purpose of investigations to determine compli-
2 ance with H-2A requirements.

3 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

4 “(1) PERMITTING FILING BY AGRICULTURAL
5 ASSOCIATIONS.—A petition to hire an alien as a
6 temporary agricultural worker may be filed by an as-
7 sociation of agricultural employers which use agri-
8 cultural services.

9 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
10 EMPLOYERS.—If an association is a joint or sole em-
11 ployer of temporary agricultural workers, such work-
12 ers may be transferred among its members to per-
13 form agricultural services of a temporary nature for
14 which the petition was approved.

15 “(3) TREATMENT OF VIOLATIONS.—

16 “(A) INDIVIDUAL MEMBER.—If an indi-
17 vidual member of a joint employer association
18 violates any condition for approval with respect
19 to the member’s petition, the Secretary of
20 Homeland Security shall deny such petition
21 only with respect to that member of the associa-
22 tion unless the Secretary of Labor determines
23 that the association or other member partici-
24 pated in, had knowledge of, or had reason to
25 know of the violation.

1 “(B) ASSOCIATION OF AGRICULTURAL EM-
2 PLOYERS.—

3 “(i) JOINT EMPLOYER.—If an associa-
4 tion representing agricultural employers as
5 a joint employer violates any condition for
6 approval with respect to the association’s
7 petition, the Secretary of Homeland Secu-
8 rity shall deny such petition only with re-
9 spect to the association and may not apply
10 the denial to any individual member of the
11 association, unless the Secretary of Labor
12 determines that the member participated
13 in, had knowledge of, or had reason to
14 know of the violation.

15 “(ii) SOLE EMPLOYER.—If an associa-
16 tion of agricultural employers approved as
17 a sole employer violates any condition for
18 approval with respect to the association’s
19 petition, no individual member of such as-
20 sociation may be the beneficiary of the
21 services of temporary alien agricultural
22 workers admitted under this section in the
23 occupation in which such aliens were em-
24 ployed by the association which was denied
25 approval during the period such denial is

1 in force, unless such member employs such
2 aliens in the occupation in question di-
3 rectly or through an association which is a
4 joint employer of such workers with the
5 member.

6 “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The
7 Secretary of Homeland Security shall promulgate regula-
8 tions to provide for an expedited procedure—

9 “(1) for the review of a denial of a petition
10 under this section by the Secretary; or

11 “(2) at the petitioner’s request, for a de novo
12 administrative hearing respecting the denial.

13 “(h) MISCELLANEOUS PROVISIONS.—

14 “(1) ENDORSEMENT OF DOCUMENTS.—The
15 Secretary of Homeland Security shall provide for the
16 endorsement of entry and exit documents of H-2A
17 workers as may be necessary to carry out this sec-
18 tion and to provide notice for purposes of section
19 274A.

20 “(2) PREEMPTION OF STATE LAWS.—The pro-
21 visions of subsections (a) and (c) of section 214 and
22 the provisions of this section preempt any State or
23 local law regulating admissibility of nonimmigrant
24 workers.

25 “(3) FEES.—

1 “(A) IN GENERAL.—The Secretary of
2 Homeland Security may require, as a condition
3 of approving the petition, the payment of a fee,
4 in accordance with subparagraph (B), to re-
5 cover the reasonable cost of processing peti-
6 tions.

7 “(B) FEE BY TYPE OF EMPLOYEE.—

8 “(i) SINGLE EMPLOYER.—An em-
9 ployer whose petition for temporary alien
10 agricultural workers is approved shall, for
11 each approved petition, pay a fee that—

12 “(I) subject to subclause (II), is
13 equal to \$100 plus \$10 for each ap-
14 proved H–2A worker; and

15 “(II) does not exceed \$1,000.

16 “(ii) ASSOCIATION.—Each employer-
17 member of a joint employer association
18 whose petition for H–2A workers is ap-
19 proved shall, for each such approved peti-
20 tion, pay a fee that—

21 “(I) subject to subclause (II), is
22 equal to \$100 plus \$10 for each ap-
23 proved H–2A worker; and

24 “(II) does not exceed \$1,000.

1 “(iii) LIMITATION ON ASSOCIATION
2 FEES.—A joint employer association under
3 clause (ii) shall not be charged a separate
4 fee.

5 “(C) METHOD OF PAYMENT.—The fees
6 collected under this paragraph shall be paid by
7 check or money order to the Department of
8 Homeland Security. In the case of employers of
9 H-2A workers that are members of a joint em-
10 ployer association petitioning applying on their
11 behalf, the aggregate fees for all employers of
12 H-2A workers under the petition may be paid
13 by 1 check or money order.

14 “(4) EMPLOYMENT VERIFICATION PROGRAM.—

15 “(A) IN GENERAL.—Not later than 12
16 months after the date of enactment of this
17 paragraph, the Secretary of Homeland Security
18 shall establish a mandatory employment
19 verification program for all employers of H-2A
20 workers to verify the eligibility of all individuals
21 hired by each such employer, including those
22 who present an H-2A visa to work in the
23 United States.

24 “(B) EMPLOYER COMPLIANCE.—Each em-
25 ployer of an H-2A worker shall comply with the

1 requirements promulgated by the Secretary of
2 Homeland Security to verify the identity and
3 employment eligibility of all individuals hired.

4 “(C) REGULATIONS.—In carrying out the
5 program under this paragraph, the Secretary of
6 Homeland Security shall promulgate regulations
7 to require each employer to verify the employ-
8 ment eligibility of each employee hired
9 through—

10 “(i) a secure Internet site;

11 “(ii) a machine capable of reading the
12 H-2A visa, which shall serve as the identi-
13 fication and employment eligibility docu-
14 ment for each H-2A alien; or

15 “(iii) a toll-free telephone number to
16 check the accuracy of any social security
17 number presented to the employer.

18 “(i) ENFORCEMENT.—

19 “(1) INVESTIGATIONS AND AUDITS.—The Sec-
20 retary of Labor shall be responsible for conducting
21 investigations and random audits of employer work
22 sites to ensure compliance with the requirements of
23 the H-2A program and all other requirements under
24 this Act. All monetary fines levied against violating
25 employers shall be paid to the Department of Labor

1 and used to enhance the Department of Labor's in-
2 vestigatory and auditing power.

3 “(2) FAILURE TO MEET CONDITIONS.—If the
4 Secretary of Labor finds, after notice and oppor-
5 tunity for a hearing, a failure to meet a condition
6 of subsection (a), or a material misrepresentation of
7 fact in a petition under subsection (a)—

8 “(A) the Secretary of Labor—

9 “(i) shall notify the Secretary of
10 Homeland Security of such finding; and

11 “(ii) may, in addition, impose such
12 other administrative remedies (including
13 civil money penalties in an amount not to
14 exceed \$1,000 per violation) as the Sec-
15 retary of Labor determines to be appro-
16 priate; and

17 “(B) the Secretary of Homeland Security
18 may disqualify the employer from the employ-
19 ment of H-2A workers for a period of 1 year.

20 “(3) PENALTIES FOR WILLFUL FAILURE.—If
21 the Secretary of Labor finds, after notice and oppor-
22 tunity for a hearing, a willful failure to meet a mate-
23 rial condition of subsection (a), or a willful misrepre-
24 sentation of a material fact in a petition under sub-
25 section (a)—

1 “(A) the Secretary of Labor—

2 “(i) shall notify the Secretary of
3 Homeland Security of such finding; and

4 “(ii) may, in addition, impose such
5 other administrative remedies (including
6 civil money penalties in an amount not to
7 exceed \$5,000 per violation) as the Sec-
8 retary of Labor determines to be appro-
9 priate;

10 “(B) the Secretary of Homeland Security
11 may—

12 “(i) disqualify the employer from the
13 employment of H-2A workers for a period
14 of 2 years;

15 “(ii) for a second violation, the Sec-
16 retary of Homeland Security may dis-
17 qualify the employer from the employment
18 of H-2A workers for a period of 5 years;
19 and

20 “(iii) for a third violation, the Sec-
21 retary of Homeland Security may perma-
22 nently disqualify the employer from the
23 employment of H-2A workers.

24 “(4) PENALTIES FOR DISPLACEMENT OF
25 UNITED STATES WORKERS.—If the Secretary of

1 Labor finds, after notice and opportunity for a hear-
2 ing, a willful failure to meet a material condition of
3 subsection (a) or a willful misrepresentation of a
4 material fact in a petition under subsection (a), in
5 the course of which failure or misrepresentation the
6 employer displaced a United States worker employed
7 by the employer during the period of employment on
8 the employer's petition under subsection (a) or dur-
9 ing the period of 30 days preceding such period of
10 employment—

11 “(A) the Secretary of Labor—

12 “(i) shall notify the Secretary of
13 Homeland Security of such finding; and

14 “(ii) may, in addition, impose such
15 other administrative remedies (including
16 civil money penalties in an amount not to
17 exceed \$15,000 per violation) as the Sec-
18 retary of Labor determines to be appro-
19 priate; and

20 “(B) the Secretary of Homeland Security
21 may—

22 “(i) disqualify the employer from the
23 employment of H-2A workers for a period
24 of 5 years; and

1 “(ii) for a second violation, perma-
2 nently disqualify the employer from the
3 employment of H-2A workers.

4 “(5) LIMITATIONS ON CIVIL MONEY PEN-
5 ALTIES.—The Secretary of Labor may not impose
6 total civil money penalties with respect to a petition
7 under subsection (b) in excess of \$90,000.

8 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-
9 FITS.—

10 “(1) ASSESSMENT.—If the Secretary of Labor
11 finds, after notice and opportunity for a hearing,
12 that the employer has failed to pay the wages, trans-
13 portation, subsistence reimbursement, or guarantee
14 of employment attested by the employer under sub-
15 section (b)(2), the Secretary of Labor shall assess
16 payment of back wages, or other required benefits,
17 due any United States worker or H-2A worker em-
18 ployed by the employer in the specific employment in
19 question.

20 “(2) AMOUNT.—The back wages or other re-
21 quired benefits described in paragraph (1)—

22 “(A) shall be equal to the difference be-
23 tween the amount that should have been paid
24 and the amount that was paid to such worker;
25 and

1 “(B) shall be distributed to the worker to
2 whom such wages are due.

3 “(k) MINIMUM WAGES, BENEFITS, AND WORKING
4 CONDITIONS.—

5 “(1) PREFERENTIAL TREATMENT OF ALIENS
6 PROHIBITED.—

7 “(A) IN GENERAL.—Each employer seek-
8 ing to hire United States workers shall offer
9 such workers not less than the same benefits,
10 wages, and working conditions that the em-
11 ployer is offering, intends to offer, or will pro-
12 vide to H-2A workers. No job offer may impose
13 on United States workers any restrictions or
14 obligations which will not be imposed on the
15 employer’s H-2A workers.

16 “(B) INTERPRETATION.—Every interpreta-
17 tion and determination made under this section
18 or under any other law, regulation, or interpre-
19 tative provision regarding the nature, scope,
20 and timing of the provision of these and any
21 other benefits, wages, and other terms and con-
22 ditions of employment shall be made so that—

23 “(i) the services of workers to their
24 employers and the employment opportuni-
25 ties afforded to workers by the employers,

1 including those employment opportunities
2 that require United States workers or H-
3 2A workers to travel or relocate in order to
4 accept or perform employment—

5 “(I) mutually benefit such work-
6 ers, as well as their families, and em-
7 ployers; and

8 “(II) principally benefit neither
9 employer nor employee; and

10 “(ii) employment opportunities within
11 the United States benefit the United
12 States economy.

13 “(2) REQUIRED WAGES.—

14 “(A) IN GENERAL.—Each employer peti-
15 tioning for workers under subsection (b) shall
16 pay not less than the greater of—

17 “(i) the prevailing wage to all workers
18 in the occupation for which the employer
19 has petitioned for workers; or

20 “(ii) the applicable State minimum
21 wage.

22 “(B) DETERMINATION OF WAGES.—An
23 employer seeking to comply with subparagraph
24 (A) may—

1 “(i) request and obtain a prevailing
2 wage determination from the State employ-
3 ment agency; or

4 “(ii) rely on other wage information,
5 including a survey of the prevailing wages
6 of workers in the occupation in the area of
7 employment that has been conducted or
8 funded by the employer or a group of em-
9 ployers, using the methodology used by the
10 Secretary of Labor to establish Occupa-
11 tional Employment and Wage estimate, or
12 another methodology approved by the Sec-
13 retary of Labor for the purpose of deter-
14 mining H-2A wages.

15 “(C) COMPLIANCE.—An employer shall be
16 considered to have complied with the require-
17 ment under subparagraph (A) if the employer—

18 “(i)(I) obtains a prevailing wage de-
19 termination under subparagraph (C)(i); or

20 “(II) relies on a qualifying survey of
21 prevailing wages; and

22 “(ii) pays such prevailing wage.

23 “(3) REIMBURSEMENT OF TRANSPORTATION
24 COSTS.—

1 “(A) REQUIREMENT FOR REIMBURSE-
2 MENT.—An H-2A worker who completes 50
3 percent of the period of employment of the job
4 for which the worker was hired, beginning on
5 the first day of such employment, shall be reim-
6 bursed by the employer for the cost of the
7 worker’s transportation and subsistence from—

8 “(i) the place from which the H-2A
9 worker was approved to enter the United
10 States to the location at which the work
11 for the employer is performed; or

12 “(ii) if the H-2A worker traveled
13 from a place in the United States at which
14 the H-2A worker was last employed, from
15 such place of last employment to the loca-
16 tion at which the work for the employer is
17 performed.

18 “(B) TIMING OF REIMBURSEMENT.—Reim-
19 bursement to the worker of expenses for the
20 cost of the worker’s transportation and subsist-
21 ence to the place of employment under subpara-
22 graph (A) shall be considered timely if such re-
23 imbursement is made not later than the work-
24 er’s first regular payday after a worker com-
25 pletes 50 percent of the period of employment

1 of the job opportunity as provided under this
2 paragraph.

3 “(C) ADDITIONAL REIMBURSEMENT.—A
4 worker who completes the period of employment
5 for the job opportunity involved shall be reim-
6 bursed by the employer for the cost of the
7 worker’s transportation and subsistence from
8 the work site to the place where the worker was
9 approved to enter the United States to work for
10 the employer. If the worker has contracted with
11 a subsequent employer, the previous and subse-
12 quent employer shall share the cost of the work-
13 er’s transportation and subsistence from work
14 site to work site.

15 “(D) LIMITATION.—

16 “(i) AMOUNT OF REIMBURSEMENT.—
17 The amount of reimbursement provided to
18 a worker or alien under this paragraph
19 shall be equal to the lesser of—

20 “(I) the actual cost to the worker
21 or alien of the transportation and sub-
22 sistence involved; or

23 “(II) the most economical and
24 reasonable common carrier transpor-

1 tation charges and subsistence costs
2 for the distance involved.

3 “(ii) DISTANCE TRAVELED.—No reim-
4 bursement under subparagraph (A) or (B)
5 shall be required if the distance traveled is
6 100 miles or less.

7 “(E) REIMBURSEMENT FOR LAID OFF
8 WORKERS.—If the worker is laid off or employ-
9 ment is terminated for contract impossibility
10 (as described in paragraph (5)(D)) before the
11 anticipated ending date of employment, the em-
12 ployer shall provide—

13 “(i) the transportation and subsist-
14 ence required under subparagraph (C); and

15 “(ii) notwithstanding whether the
16 worker has completed 50 percent of the pe-
17 riod of employment, the transportation re-
18 imbursement required under subparagraph
19 (A).

20 “(F) CONSTRUCTION.—Nothing in this
21 paragraph shall be construed to require an em-
22 ployer to reimburse visa, passport, consular, or
23 international bordercrossing fees or any other
24 fees associated with the H-2A worker’s lawful
25 admission into the United States to perform

1 employment that may be incurred by the work-
2 er.

3 “(4) EMPLOYMENT GUARANTEE.—

4 “(A) IN GENERAL.—

5 “(i) REQUIREMENT.—Each employer
6 petitioning for workers under subsection
7 (b) shall guarantee to offer the worker em-
8 ployment for the hourly equivalent of not
9 less than 75 percent of the work hours
10 during the total anticipated period of em-
11 ployment, beginning with the first work
12 day after the arrival of the worker at the
13 place of employment and ending on the ex-
14 piration date specified in the job offer.

15 “(ii) FAILURE TO MEET GUAR-
16 ANTEE.—If the employer affords the
17 United States worker or the H-2A worker
18 less employment than that required under
19 this subparagraph, the employer shall pay
20 such worker the amount which the worker
21 would have earned if the worker had
22 worked for the guaranteed number of
23 hours.

24 “(iii) PERIOD OF EMPLOYMENT.—For
25 purposes of this subparagraph, the term

1 “period of employment” means the total
2 number of anticipated work hours and
3 workdays described in the job offer and
4 shall exclude the worker’s Sabbath and
5 Federal holidays.

6 “(B) CALCULATION OF HOURS.—Any
7 hours which the worker fails to work, up to a
8 maximum of the number of hours specified in
9 the job offer for a work day, when the worker
10 has been offered an opportunity to do so, and
11 all hours of work actually performed (including
12 voluntary work in excess of the number of
13 hours specified in the job offer in a work day,
14 on the worker’s Sabbath, or on Federal holi-
15 days) may be counted by the employer in calcu-
16 lating whether the period of guaranteed employ-
17 ment has been met.

18 “(C) LIMITATION.—If the worker volun-
19 tarily abandons employment before the end of
20 the contract period, or is terminated for cause,
21 the worker is not entitled to the 75 percent
22 guarantee described in subparagraph (A).

23 “(D) TERMINATION OF EMPLOYMENT.—

24 “(i) IN GENERAL.—If, before the expi-
25 ration of the period of employment speci-

1 fied in the job offer, the services of the
2 worker are no longer required due to any
3 form of natural disaster, including flood,
4 hurricane, freeze, earthquake, fire,
5 drought, plant or animal disease, pest in-
6 festation, regulatory action, or any other
7 reason beyond the control of the employer
8 before the employment guarantee in sub-
9 paragraph (A) is fulfilled, the employer
10 may terminate the worker's employment.

11 “(ii) REQUIREMENTS.—If a worker's
12 employment is terminated under clause (i),
13 the employer shall—

14 “(I) fulfill the employment guar-
15 antee in subparagraph (A) for the
16 work days that have elapsed during
17 the period beginning on the first work
18 day after the arrival of the worker
19 and ending on the date on which such
20 employment is terminated; and

21 “(II) make efforts to transfer the
22 United States worker to other com-
23 parable employment acceptable to the
24 worker.

1 “(l) EXPEDITED ADJUDICATION BY THE SEC-
2 RETARY.—The Secretary of Homeland Security—

3 “(1) shall establish a procedure for expedited
4 adjudication of petitions filed under subsection (e);
5 and

6 “(2) not later than 7 working days after such
7 filing shall, by fax, cable, or other means assuring
8 expedited delivery transmit a copy of notice of action
9 on the petition—

10 “(A) to the petitioner; and

11 “(B) in the case of approved petitions, to
12 the appropriate immigration officer at the port
13 of entry or United States consulate (as the case
14 may be) where the petitioner has indicated that
15 the alien beneficiary (or beneficiaries) will apply
16 for a visa or admission to the United States.

17 “(m) PERIOD OF ADMISSION.—

18 “(1) IN GENERAL.—An H-2A worker shall be
19 admitted for a period of employment, not to exceed
20 10 months, that includes—

21 “(A) a period of not more than 7 days
22 prior to the beginning of the period of employ-
23 ment for the purpose of travel to the work site;
24 and

1 “(B) a period of not more than 14 days
2 following the period of employment for the pur-
3 pose of departure or extension based on a sub-
4 sequent offer of employment.

5 “(2) EMPLOYMENT LIMITATION.—An alien may
6 not be employed during the 14-day period described
7 in paragraph (1)(B) except in the employment for
8 which the alien was previously authorized.

9 “(3) CONSTRUCTION.—Nothing in this sub-
10 section shall limit the authority of the Secretary of
11 Homeland Security to extend the stay of an alien
12 under any other provision of this Act.

13 “(n) ABANDONMENT OF EMPLOYMENT.—

14 “(1) IN GENERAL.—An alien admitted or pro-
15 vided status under section 101(a)(15)(H)(ii)(a) who
16 abandons the employment which was the basis for
17 such admission or status—

18 “(A) shall have failed to maintain non-
19 immigrant status as an H-2A worker; and

20 “(B) shall depart the United States or be
21 subject to removal under section
22 237(a)(1)(C)(i).

23 “(2) REPORT BY EMPLOYER.—Not later than
24 24 hours after the abandonment of employment by
25 an H-2A worker, the employer or association acting

1 as an agent for the employer, shall notify the Sec-
2 retary of Homeland Security of such abandonment.

3 “(3) REMOVAL.—The Secretary of Homeland
4 Security shall promptly remove from the United
5 States any H-2A worker who violates any term or
6 condition of the worker’s nonimmigrant status.

7 “(4) VOLUNTARY TERMINATION.—Notwith-
8 standing paragraph (1), an alien may voluntarily
9 terminate the alien’s employment if the alien
10 promptly departs the United States upon termi-
11 nation of such employment.

12 “(o) REPLACEMENT OF ALIEN.—

13 “(1) IN GENERAL.—Upon notification under
14 subsection (p)(2)—

15 “(A) the Secretary of State shall promptly
16 issue a visa to, and the Secretary of Homeland
17 Security shall admit into the United States, an
18 eligible alien designated by the employer to re-
19 place an H-2A worker who abandons or pre-
20 maturely terminates employment; and

21 “(B) the Secretary of Homeland Security
22 shall admit such alien into the United States.

23 “(2) CONSTRUCTION.—Nothing in this sub-
24 section shall limit any preference for which United
25 States workers are eligible under this Act.

1 “(p) IDENTIFICATION DOCUMENT.—

2 “(1) IN GENERAL.—The Secretary of Homeland
3 Security shall provide each authorized H–2A worker
4 with a single machine-readable, tamper-resistant,
5 and counterfeit-resistant document that—

6 “(A) authorizes the alien’s entry into the
7 United States;

8 “(B) serves, for the appropriate period, as
9 an employment eligibility document; and

10 “(C) verifies the identity of the alien.

11 “(2) FORM.—

12 “(A) The document shall be—

13 “(i) in a form that is resistant to
14 counterfeiting and to tampering; and

15 “(ii) compatible with—

16 “(I) other databases of the Sec-
17 retary of Homeland Security for the
18 purpose of excluding an alien from
19 benefits for which an alien is not eligi-
20 ble and determining whether the alien
21 is unlawfully present in the United
22 States; and

23 “(II) law enforcement databases
24 for the purpose of determining if an

1 alien has been convicted of criminal
2 offenses.

3 “(B) As soon as practicable, the document
4 shall include a biometric identifier. The deter-
5 mination of a biometric identifier to be used for
6 such purposes shall take into account factors
7 such as efficiency, accuracy, the technology
8 available, economic considerations, and storage
9 requirements.

10 “(q) EXTENSION OF STAY OF H-2A WORKERS IN
11 THE UNITED STATES.—

12 “(1) EXTENSION OF STAY.—If an employer
13 seeks approval to employ an H-2A worker who is
14 lawfully present in the United States, the petition
15 filed by the employer or an association pursuant to
16 subsection (p) shall request an extension of the
17 alien’s stay and, if applicable, a change in the alien’s
18 employment.

19 “(2) LIMITATION ON FILING PETITION FOR EX-
20 TENSION OF STAY.—A petition may not be filed for
21 an extension of an alien’s stay for a period of more
22 than 10 months.

23 “(3) WORK AUTHORIZATION UPON FILING PE-
24 TITION FOR EXTENSION OF STAY.—

1 “(A) IN GENERAL.—An alien who is law-
2 fully present in the United States on the date
3 of the filing of a petition to extend the stay of
4 the alien may commence or continue the em-
5 ployment described in a petition under para-
6 graph (1). The employer shall provide a copy of
7 the employer’s petition for extension of stay to
8 the alien. The alien shall keep the petition with
9 the alien’s identification and employment eligi-
10 bility document, as evidence that the petition
11 has been filed and that the alien is authorized
12 to work in the United States.

13 “(B) EMPLOYMENT ELIGIBILITY DOCU-
14 MENT.—Upon approval of a petition for an ex-
15 tension of stay or change in the alien’s author-
16 ized employment, the Secretary of Homeland
17 Security shall provide a new or updated employ-
18 ment eligibility document to the alien indicating
19 the new validity date, after which the alien is
20 not required to retain a copy of the petition.

21 “(C) FILE DEFINED.—In this paragraph,
22 the term ‘file’ means sending the petition by
23 certified mail via the United States Postal Serv-
24 ice, return receipt requested, or delivering by
25 guaranteed commercial delivery which will pro-

1 vide the employer with a documented acknowl-
2 edgment of the date of receipt of the petition
3 for an extension of stay.

4 “(4) LIMITATION ON AN INDIVIDUAL’S STAY IN
5 STATUS.—

6 “(A) MAXIMUM PERIOD.—The maximum
7 continuous period of authorized status as an
8 H-2A worker (including any extensions) is 20
9 months.

10 “(B) REQUIREMENT TO REMAINS OUTSIDE
11 THE UNITED STATES.—

12 “(i) IN GENERAL.—Subject to clause
13 (ii), in the case of an alien outside the
14 United States whose period of authorized
15 status as an H-2A worker (including any
16 extensions) has expired, the alien may not
17 again apply for admission to the United
18 Stats as an H-2A worker unless the alien
19 has remained outside the United States for
20 a continuous period equal to at least $\frac{1}{5}$
21 the duration of the alien’s previous period
22 of authorized status as an H-2A worker
23 (including any extensions).

24 “(ii) EXCEPTION.—Clause (i) shall
25 not apply in the case of an alien if the

1 alien's period of authorized status as an
2 H-2A worker (including any extensions)
3 was for a period of not more than 10
4 months and such alien has been outside
5 the United States for at least 2 months
6 during the 12 months preceding the date
7 the alien again is applying for admission to
8 the United States as an H-2A worker.

9 “(r) TRUST FUND TO ASSURE WORKER RETURN.—

10 “(1) ESTABLISHMENT.—There is established in
11 the Treasury of the United States a trust fund (in
12 this section referred to as the ‘Trust Fund’) for the
13 purpose of providing a monetary incentive for H-2A
14 nonimmigrants to return to their country of origin
15 upon expiration of their visas.

16 “(2) WITHHOLDING OF WAGES; PAYMENT INTO
17 THE TRUST FUND.—Employers of H-2A non-
18 immigrants shall withhold from the wages of work-
19 ers an amount equivalent to 25 percent of the wages
20 of each worker and pay such withheld amount into
21 the Trust Fund in accordance with paragraph (3).
22 Amounts withheld under the preceding sentence
23 shall be maintained in such interest bearing account
24 with such a financial institution as the Secretary of
25 Homeland Security shall specify.

1 “(3) DISTRIBUTION OF FUNDS.—Amounts paid
2 into the Trust Fund on behalf of an H-2A non-
3 immigrant, and held pursuant to paragraph
4 (2)(A)(i) and interest earned thereon, shall be paid
5 by the Secretary of State to the worker if—

6 “(A) the worker applies to the Secretary of
7 State (or the designee of such Secretary) for
8 payment within 30 days of the expiration of the
9 alien’s last authorized stay in the United States
10 as an H-2A nonimmigrant at a United States
11 embassy or consulate in the worker’s home
12 country;

13 “(B) in such application the worker estab-
14 lishes that the worker has complied with the
15 terms and conditions of the H-2A program;
16 and

17 “(C) in connection with the application,
18 the worker tenders the identification and em-
19 ployment authorization card issued to the work-
20 er pursuant to subsection (p) and establishes
21 that the worker is identified as the person to
22 whom the card was issued based on the biomet-
23 ric identification information contained on the
24 card.

1 “(4) ADMINISTRATIVE EXPENSES.—The
2 amounts paid into the Trust Fund and held pursu-
3 ant to paragraph (2)(A)(ii), and interest earned
4 thereon, shall be paid to the Secretary of State, the
5 Secretary of Labor, and the Secretary of Homeland
6 Security in amounts equivalent to the expenses in-
7 curred by such officials in the administration of the
8 H-2A program.

9 “(s) INVESTMENT OF TRUST FUND.—

10 “(1) IN GENERAL.—It shall be the duty of the
11 Secretary of the Treasury to invest such portion of
12 the Trust Fund as is not, in the Secretary’s judg-
13 ment, required to meet current withdrawals. Such
14 investments may be made only in interest-bearing
15 obligations of the United States or in obligations
16 guaranteed as to both principal and interest by the
17 United States. For such purpose, such obligations
18 may be acquired—

19 “(A) on original issue at the price; or

20 “(B) by purchase of outstanding obliga-
21 tions at the market price.

22 The purposes for which obligations of the United
23 States may be issued under chapter 31 of title 31,
24 United States Code, are hereby extended to author-
25 ize the issuance at par of special obligations exclu-

1 sively to the Trust Fund. Such special obligations
2 shall bear interest at a rate equal to the average
3 rate of interest, computed as to the end of the cal-
4 endar month next preceding the date of such issue,
5 borne by all marketable interest-bearing obligations
6 of the United States then forming a part of the pub-
7 lic debt, except that where such average rate is not
8 a multiple of one-eighth of 1 percent next lower than
9 such average rate. Such special obligations shall be
10 issued only if the Secretary of the Treasury deter-
11 mines that the purchase of other interest-bearing ob-
12 ligations of the United States, or of obligations
13 guaranteed as to both principal and interest by the
14 United States on original issue or at the market
15 price, is not in the public interest.

16 “(2) SALE OF OBLIGATION.—Any obligation ac-
17 quired by the Trust Fund (except special obligations
18 issued exclusively to the Trust Fund) may be sold by
19 the Secretary of the Treasury at the market price,
20 and such special obligations may be redeemed at par
21 plus accrued interest.

22 “(3) CREDITS TO TRUST FUND.—The interest
23 on, and the proceeds from the sale or redemption of,
24 any obligations held in the Trust Fund shall be
25 credited to and form a part of the Trust Fund.

1 “(4) REPORT TO CONGRESS.—It shall be the
2 duty of the Secretary of the Treasury to hold the
3 Trust Fund, and (after consultation with the Sec-
4 retary of Homeland Security) to report to the Con-
5 gress each year on the financial condition and the
6 results of the operations of the Trust Fund during
7 the preceding fiscal year and on its expected condi-
8 tion and operations during the next fiscal year. Such
9 report shall be printed as both a House and a Sen-
10 ate document of the session of the Congress to
11 which the report is made.

12 “(t) SPECIAL RULE FOR ALIENS EMPLOYED AS
13 SHEEPHERDERS, GOATHERDERS, OR DAIRY WORKERS.—
14 Notwithstanding any other provision of this section, an
15 alien admitted under section 101(a)(15)(H)(ii)(a) for em-
16 ployment as a shepherd, goatherder, or dairy worker—

17 “(1) may be admitted for a period of 12
18 months; and

19 “(2) shall not be subject to the requirements of
20 subsection (r)(4)(B).”.

21 (b) PROHIBITION ON FAMILY MEMBERS.—Section
22 101(a)(15)(H) of the Immigration and Nationality Act (8
23 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at
24 the end and inserting “him, except that no spouse or child
25 may be admitted under clause (ii)(a);”.

1 (c) REGULATIONS.—Not later than 180 days after
2 the date of the enactment of this Act, the Secretary of
3 Homeland Security shall promulgate regulations, in ac-
4 cordance with the notice and comment provisions of sec-
5 tion 553 of title 5, United States Code, to provide for the
6 uniform procedures for the issuance of visas to non-
7 immigrants described in section 101(a)(15)(H)(ii)(a) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1101(a)(15)(H)(ii)(a)) by visa-issuing United States con-
10 sulates and consular officers.

11 (d) CONFORMING AMENDMENT.—Section
12 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
13 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) is amended by strik-
14 ing “of a temporary or seasonal nature” and inserting
15 “and with respect to whom the intending employer or as-
16 sociation has filed with the Secretary a petition under sec-
17 tion 218(a)”.

18 **SEC. 402. LEGAL ASSISTANCE PROVIDED BY THE LEGAL**
19 **SERVICES CORPORATION.**

20 (a) IN GENERAL.—Section 305 of the Immigrant Re-
21 form and Control Act of 1986 (8 U.S.C. 1101 note) is
22 amended—

- 23 (1) by striking “A nonimmigrant” and inserting
24 “(a) IN GENERAL.—A nonimmigrant”; and
25 (2) by adding at the end the following:

1 “(b) LEGAL ASSISTANCE.—The Legal Services Cor-
2 poration may not provide legal assistance for or on behalf
3 of any alien, and may not provide financial assistance to
4 any person or entity that provides legal assistance for or
5 on behalf of any alien, unless the alien—

6 “(1) is present in the United States at the time
7 the legal assistance is provided; and

8 “(2) is an alien to whom subsection (a) ap-
9 plies.”.

10 (b) MEDIATION.—Section 305 of the Immigrant Re-
11 form and Control Act of 1986 (8 U.S.C. 1101 note), as
12 amended by subsection (a), is further amended by adding
13 at the end the following:

14 “(c) REQUIRED MEDIATION.—The Legal Services
15 Corporation may not bring a civil action for damages on
16 behalf of a nonimmigrant described in section
17 101(a)(15)(H)(ii)(a) of the Immigration and Nationality
18 Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), unless at least 90
19 days prior to bringing the action a request has been made
20 to the Federal Mediation and Conciliation Service to assist
21 the parties in reaching a satisfactory resolution of all
22 issues involving all parties to the dispute and mediation
23 has been attempted.”.

24 (c) CONDITION FOR ENTRY ONTO PROPERTY FOR
25 LEGAL SERVICES CORPORATION REPRESENTATION.—

1 Section 305 of the Immigrant Reform and Control Act
2 of 1986 (8 U.S.C. 1101 note), as amended by subsection
3 (b), is further amended by adding at the end the following:

4 “(d) CONDITION FOR ENTRY ONTO EMPLOYER’S
5 PROPERTY FOR LEGAL SERVICES CORPORATION REP-
6 RESENTATION.—No employer of a nonimmigrant having
7 status under section 101(a)(15)(H)(ii)(a) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))
9 shall be required to permit any recipient of a grant or con-
10 tract under section 1007 of the Legal Services Corpora-
11 tion Act (42 U.S.C. 2996f), or any employee of such a
12 recipient, to enter upon the employer’s property, unless
13 such recipient or employee has a pre-arranged appoint-
14 ment with a specific nonimmigrant having such status.”.

15 **SEC. 403. EFFECTIVE DATE.**

16 The amendments made by this title shall take effect
17 on the date that is 180 days after the date of the enact-
18 ment of this Act and shall apply to petitions approved
19 after such date.

20 **TITLE V—ENGLISH AS OFFICIAL**
21 **LANGUAGE**

22 **SEC. 501. NULLIFICATION OF EFFECT OF EXECUTIVE**
23 **ORDER.**

24 Executive Order 13166, entitled “Improving Access
25 to Services for Persons with Limited English Proficiency”

1 (August 16, 2000; 65 Fed. Reg. 50121), is null and void
2 and shall have no force or effect.

3 **SEC. 502. PROHIBITION AGAINST USE OF FUNDS FOR CER-**
4 **TAIN PURPOSES.**

5 No funds appropriated pursuant to any provision of
6 law may be used to promulgate or enforce any executive
7 order that creates an entitlement to services provided in
8 any language other than English.

9 **SEC. 503. ENGLISH AS THE OFFICIAL LANGUAGE OF THE**
10 **GOVERNMENT OF THE UNITED STATES.**

11 (a) IN GENERAL.—Title 4, United States Code, is
12 amended by adding at the end the following new chapter:

13 **“CHAPTER 6—LANGUAGE OF THE**
14 **GOVERNMENT**

15 **“SEC. 161. DECLARATION OF OFFICIAL LANGUAGE.**

16 “English shall be the official language of the Govern-
17 ment of the United States.

18 **“SEC. 162. OFFICIAL GOVERNMENT ACTIVITIES IN**
19 **ENGLISH.**

20 “The Government of the United States shall conduct
21 its official business in English, including publications, in-
22 come tax forms, and informational materials.

1 **“SEC. 163. PRESERVING AND ENHANCING THE ROLE OF**
2 **THE OFFICIAL LANGUAGE.**

3 “The Government of the United States shall preserve
4 and enhance the role of English as the official language
5 of the United States. Unless specifically stated in applica-
6 ble law, no person has a right, entitlement, or claim to
7 have the Government of the United States or any of its
8 officials or representatives act, communicate, perform or
9 provide services, or provide materials in any language
10 other than English. If exceptions are made, such does not
11 create a legal entitlement to additional services in that lan-
12 guage or any language other than English. If any forms
13 are issued by the Federal Government in a language other
14 than English (or such forms are completed in a language
15 other than English), the English language version of the
16 form is the sole authority for all legal purposes.

17 **“SEC. 164. EXCEPTIONS.**

18 “(a) IN GENERAL.—This chapter shall not apply to
19 the use of a language other than English—

20 “(1) for religious purposes;

21 “(2) for training in foreign languages for inter-
22 national communication; or

23 “(3) to programs in schools designed to encour-
24 age students to learn foreign languages.

1 This chapter does not prevent the Government of the
2 United States from providing interpreters for persons over
3 62 years of age.

4 “(b) CONFORMING AMENDMENT.—The table of chap-
5 ters for title 4, United States Code, is amended by adding
6 at the end the following new item:

“‘6. Language of the Government’.

7 **SEC. 504. ENGLISH LANGUAGE REQUIREMENT FOR CERE-**
8 **MONIES FOR ADMISSION OF NEW CITIZENS.**

9 Section 337(d) of the Immigration and Nationality
10 Act (8 U.S.C. 1448(d)) is amended by adding at the end
11 the following new sentence: “All public ceremonies in
12 which the oath of allegiance is administered pursuant to
13 this section shall be conducted solely in the English lan-
14 guage.”.

15 **TITLE VI—MISCELLANEOUS**

16 **SEC. 601. CLARIFICATION OF RULES FOR DETERMINING IN-**
17 **SURED STATUS AND WORK RECORD FOR SO-**
18 **CIAL SECURITY BASED ON SERVICE OF NON-**
19 **CITIZENS WHILE NOT AUTHORIZED TO WORK**
20 **IN THE UNITED STATES.**

21 (a) ELIGIBILITY FOR STATUS AS INSURED INDIV-
22 IDUAL CONTINGENT UPON APPROPRIATE ASSIGNMENT
23 OF SOCIAL SECURITY ACCOUNT NUMBER.—Section
24 214(c) of the Social Security Act (42 U.S.C. 414(c)) is
25 amended—

1 (1) by striking “individual, if not a United
2 States citizen or national—” and inserting “indi-
3 vidual—”; and

4 (2) by striking paragraph (1) and inserting the
5 following:

6 “(1) has been assigned a social security account
7 number, and the assignment of such number—

8 “(A) occurred while such individual was a
9 citizen or national of the United States, or

10 “(B) was consistent, at the time of the as-
11 signment, with the requirements of subclause
12 (I) or (III) of section 205(c)(2)(B)(i); or”.

13 (b) REASSIGNMENT OF SOCIAL SECURITY ACCOUNT
14 NUMBERS.—Section 205(c)(2)(B) of such Act (42 U.S.C.
15 405(c)(2)(B)) is amended—

16 (1) by redesignating clause (iii) as clause (iv);
17 and

18 (2) by inserting after clause (ii) the following
19 new clause:

20 “(iii) In any case in which the assignment of a social
21 security account number to an individual who was not, at
22 the time of the assignment, a citizen or national of the
23 United States is determined by the Commissioner to not
24 have been consistent, at the time of the assignment, with
25 the requirements of subclause (I) or (III) of clause (i),

1 the Commissioner may issue a replacement social security
2 account number to such individual while such individual
3 is a citizen or national of the United States or in a manner
4 consistent with the requirements of subclauses (I) and
5 (III) of clause (i).”.

6 (c) DISREGARD OF EARNINGS BY INDIVIDUALS IN
7 THE UNITED STATES WHILE SUCH INDIVIDUALS ARE
8 NOT CITIZENS, NATIONALS, OR LAWFUL PERMANENT
9 RESIDENTS OF THE UNITED STATES AND ARE NOT AU-
10 THORIZED TO BE EMPLOYED IN THE UNITED STATES.—

11 (1) DETERMINATIONS OF QUARTERS OF COV-
12 ERAGE.—Section 213 of such Act (42 U.S.C. 413)
13 is amended by adding at the end the following new
14 subsection:

15 “Disregard of Certain Earnings by Noncitizens

16 “(e) For purposes of determining an individual’s
17 quarters of coverage under this section, such individual
18 shall not be credited with any wages paid to such indi-
19 vidual for services performed in the United States, or any
20 self-employment income derived by such individual in the
21 United States, if such services were performed, or such
22 self-employment income was derived, while such indi-
23 vidual—

24 “(1) was not a citizen or national of the United
25 States,

1 “(2) was not lawfully admitted for permanent
2 residence in the United States, and

3 “(3) was not authorized to be employed in the
4 United States.”.

5 (2) DETERMINATIONS OF AVERAGE INDEXED
6 MONTHLY EARNINGS.—Section 215(e) of such Act
7 (42 U.S.C. 415(e)) is amended—

8 (A) by redesignating paragraphs (1) and
9 (2) as subparagraphs (A) and (B), respectively;
10 (B) by inserting “(1)” after “(e)”; and
11 (C) by adding at the end the following new
12 paragraph:

13 “(2) For purposes of subsections (b) and (d), in com-
14 puting an individual’s average indexed monthly earnings
15 (or in the case of an individual whose primary insurance
16 amount is computed under section 215(a) as in effect
17 prior to January 1979, average monthly wage), such indi-
18 vidual shall not be credited with any wages paid to such
19 individual for services performed in the United States, or
20 any self-employment income derived by such individual in
21 the United States, if such services were performed, or such
22 self-employment income was derived, while such indi-
23 vidual—

24 “(A) was not a citizen or national of the United
25 States,

1 “(B) was not lawfully admitted for permanent
2 residence in the United States, and

3 “(C) was not authorized to be employed in the
4 United States.”.

5 (d) REQUIREMENTS FOR TOTALIZATION AGREE-
6 MENTS.—Section 233(c) of such Act (42 U.S.C. 433(c))
7 is amended—

8 (1) by redesignating paragraph (4) as para-
9 graph (5); and

10 (2) by inserting after paragraph (3) the fol-
11 lowing new paragraph:

12 “(4) Nothing in the preceding provisions of this sub-
13 section may be construed to authorize any inconsistency
14 in such agreement with the requirements of sections
15 213(e), 214(c), and 215(e)(2) in the case of any individual
16 who, at any time such requirements apply to such indi-
17 vidual—

18 “(A) is not a citizen or national of the United
19 States,

20 “(B) is not lawfully admitted for permanent
21 residence in the United States, and

22 “(C) is not authorized to be employed in the
23 United States.”.

24 (e) EFFECTIVE DATE.—The amendments made by
25 subsections (a), (b), and (c) of this section shall apply with

1 respect to social security account numbers assigned, with
2 respect to wages paid, and with respect to self-employment
3 income derived before, on, or after the date of the enact-
4 ment of this Act. The amendments made by subsection
5 (d) shall apply with respect to totalization agreements
6 transmitted by the President to the Congress on or after
7 May 1, 2007. Notwithstanding section 215(f)(1) of the So-
8 cial Security Act (42 U.S.C. 415(f)(1)), as soon as prac-
9 ticable after the date of the enactment of this Act, the
10 Commissioner of Social Security shall recompute all pri-
11 mary insurance amounts to the extent necessary to carry
12 out the amendments made by this Act. Such amendments
13 shall affect benefits only for months after the date of the
14 enactment of this Act.

15 **SEC. 602. PROHIBITION ON ACCEPTANCE OF IDENTIFICA-**
16 **TION ISSUED BY FOREIGN GOVERNMENTS.**

17 (a) IN GENERAL.—A Federal agency may not accept,
18 for any official purpose, an identification document for an
19 individual if the identification document is issued by a for-
20 eign government.

21 (b) EXCEPTION.—If a passport issued by a foreign
22 government is authorized by Federal law to be accepted
23 for a specific official purpose on the date of the enactment
24 of this Act, subsection (a) shall not be construed to affect
25 such authorization.

1 (c) DEFINITION.—For purposes of this section, the
2 term “Federal agency” means—

3 (1) an Executive agency (as defined in section
4 105 of title 5, United States Code);

5 (2) a military department (as defined in section
6 102 of title 5, United States Code);

7 (3) an office, agency, or other establishment in
8 the legislative branch of the Government of the
9 United States;

10 (4) an office, agency, or other establishment in
11 the judicial branch of the Government of the United
12 States; and

13 (5) the government of the District of Columbia.

14 **SEC. 603. TABULATION OF UNITED STATES CITIZENS.**

15 The Secretary of Commerce, in conducting the 2010
16 decennial census and each decennial census thereafter,
17 shall include in any questionnaire which is distributed or
18 otherwise made available to the general population for the
19 purpose of determining the total population of the United
20 States, a question as to how many of the persons to be
21 accounted for on such questionnaire are citizens of the
22 United States.